Forward to the Second Edition

March 2, 2000

The *Search and Seizure Source Book* is the culmination of more than twenty years of dedicated efforts of many members of the Legal Division at the Federal Law Enforcement Training Center. Contained herein are brief descriptions of the facts, issues and holdings of every important Supreme Court case decided concerning search and seizure issues. I hope you find it a useful tool in preparing for the legal courses here in Glynco and for serving your agency in the years to come.

I would like to express my appreciation for those that worked most diligently in creating this instrument. Many members of the Legal Division, past and present, created these briefs to include Frank Stevens, Ed Armstrong, Dan Duncan, Dean Hawkins, Don Usher, Jim Baker and John Besselman. The Legal Division could not have constructed the book itself without the outstanding efforts of the Legal Division interns Sean Martin, Lori Miller and Amy Fracasso. Amy was particularly instrumental in that she wrote many briefs contained in this book and assisted in the editing of the final version.

Vanessa Parker deserves a special thanks of appreciation, who not only wrote many briefs found in this book, but also edited much of it. Vanessa took care of all the details that are crucial to the completion of a project such as this, and her work was greatly valued.

Finally, I would like to especially thank John Besselman for his commitment to this project and the oversight he provided. Not only did John create the concept of a source book for student use, he was instrumental in every phase of its construction. Without his efforts, there would not be a *Search and Seizure Source Book*.

Walter C. Koran
Division Chief, Legal Division

How to Use this Book

This book tracks the Search and Seizure Student Text. The text relies essentially on the Supreme Court case that have developed Fourth Amendment law. While the crucial principles of the law are embedded in the student text, this resource allows the student an opportunity to gain further insight, clarity and understanding of the law.

Some students have found this resource helpful in preparing for legal examinations. The facts of each case mimic multiple choice test questions. The issue in each case brief can serve as a test question. Students may attempt to answer the question posed in the issue before reading the Supreme Court's answer and rational as a means of testing their knowledge gained from course work and the text.

This book may be downloaded at the Legal Division web site-

http://www.treas.gov/fletc/legal/legal_home.htm

Also available at the web site is the *Quarterly Review*, an update of important legal cases the Legal Division issues four times a year.

For advanced updates the legal division presents the Continuing Legal Education Training Program (CLETP). The CLETP is offered at Glynco, Georgia as well as various sites in the field. Please refer to our CLETP web page at the above address for locations and dates.

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I. INTRODUCTION

Arizona v. Hicks
480 U.S. 321, 107 S.Ct. 1149 (1987)

FACTS: A bullet was fired through the floor of defendant's apartment, striking and injuring a man in the apartment below. Police officers arrived and entered defendant's apartment to search for the shooter, other victims, and weapons. They found and seized some weapons.

An officer noticed two sets of expensive stereo components, "which seemed out of place in the squalid and otherwise ill-appointed apartment." Suspecting that they were stolen, he read and recorded their serial numbers. In doing so, he moved some of the components. The officer then reported by phone to his headquarters. After being told that the turntable had been stolen in an armed robbery, he immediately seized it. It was later determined that some of the other serial numbers matched those on other stereo equipment taken in the same armed robbery, and a warrant was obtained to seize that equipment as well.

ISSUE: Whether the evidence seized was obtained under the "plain view" doctrine?

HELD: No. The evidence was not seized under the "plain view" doctrine because the officer did not have probable cause that the components were stolen at the time of the search.

DISCUSSION: The officer's moving of the equipment constituted a "search" separate and apart from the search for the shooter, victims, and weapons that were the lawful objectives of his entry into the apartment. This search required probable cause. The state conceded that the officer did not have probable cause, but only reasonable suspicion to move the stereo components. Absent special operational necessity, any seizure that is unrelated to the original exigencies that justified the officer's warrantless entry onto the premises, must itself be supported by probable cause, even though the object seized is in plain view. As the officer did not have probable cause at the time he seized the stereo components, the "plain view" doctrine does not apply.

Brower v. Inyo County
489 U.S. 593, 109 S.Ct. 1378 (1989)

FACTS: The decedent was killed when he drove a stolen car through a police roadblock. The roadblock consisted of an 18-wheel tractor-trailer placed across both lanes of a two-lane road, behind a curve, and unilluminated. A police car, with its headlights on, was placed between the decedent's vehicle and the tractor-trailer. The decedent's estate filed a §1983 action alleging that the police officers, acting under the color of law, violated his Fourth Amendment right to be free from unreasonable seizures.

ISSUE: Whether setting up a roadblock constitutes a seizure under the Fourth Amendment?

HELD: No. The officers action of setting up the roadblock was not a seizure. It was not until the decedent crashed into the roadblock that he was "seized" within the meaning of the Fourth Amendment.

DISCUSSION: A person is seized within the meaning of the Fourth Amendment whenever the government has terminated a person's freedom of movement through means intentionally applied. A Fourth Amendment seizure, however, does not occur just because there is a governmentally caused termination of an individual's freedom of movement (e.g. the innocent passerby). Only when there is a governmental termination of freedom of

movement *through means intentionally applied* does a Fourth Amendment seizure occur.

In this case, the police set up a roadblock with the intention of stopping the decedent. However, the decedent was meant to be stopped by the physical obstacle of the roadblock which was set up in such a manner as to be likely to kill him. Such conduct was enough to constitute a seizure within the meaning of the Fourth Amendment.

Florida v. Bostick
501 U.S. 389, 111 S.Ct. 2382 (1991)

FACTS: As part of a drug interdiction effort, Broward County Sheriff's Department officers routinely boarded buses at scheduled stops and asked passengers for permission to search their luggage. Two officers boarded a bus that the defendant was riding. Without articulable suspicion, the officers questioned the defendant and requested his consent to search his luggage for drugs, advising him of his right to refuse. The defendant gave his permission. The officers found cocaine located inside the luggage.

The government conceded that the officers lacked reasonable suspicion to justify a seizure, and that, if a seizure of the defendant took place, the drugs found in his suitcase must be suppressed.

ISSUE: Whether a police encounter on a bus necessarily constitutes a "seizure" within the meaning of the Fourth Amendment?

HELD: No. A person is "seized" when their freedom of movement is restricted by government action.

DISCUSSION: The proper test in deciding whether a person has been seized is not whether a reasonable person would feel free to leave, but whether, a reasonable passenger would feel free to terminate the encounter. Random bus searches pursuant to a passenger's consent are not per se unconstitutional. Rather, the cramped confines of a bus are but one relevant factor to be considered in evaluating whether that encounter constitutes a "seizure" within the meaning of the Fourth Amendment.

Even when officers have no basis for suspecting a particular individual of any criminal activity, they may generally ask questions of that individual, ask to examine his identification, and request to search his luggage. It is important that they do not convey a message that compliance with their requests is mandatory. Rather, only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen will a seizure have occurred.

In this case, the fact that the defendant did not feel free to leave the bus does not mean that the police seized him. His movements were confined in a sense, but this was the natural result of his decision to take the bus. The officers did not point guns at the defendant or threaten him or otherwise imply that compliance with their request was mandatory. Further, the officers specifically advised him that he could refuse consent. Therefore, the action by the police on the bus did not constitute a seizure within the meaning of the Fourth Amendment.

California v. Hodari
499 U.S. 621, 111 S.Ct. 1547 (1991)

FACTS: Two officers were on patrol in a high-crime area. They noticed a group of youths huddled around a car. The youths, including the defendant, fled at the approach of the unmarked police car. A police officer, wearing a "raid" jacket, left the patrol car to give chase. The officer took a circuitous route that brought him face to face with the defendant. The defendant was looking behind as he ran and did not turn to see the officer until the officer was almost upon him. The defendant tossed away a small rock. The officer tackled him, handcuffed him, and radioed for assistance. The police recovered the rock, which proved to be crack cocaine.

ISSUE: Whether the defendant was "seized" within the meaning of the Fourth Amendment by being pursued by a police officer?

HELD: No. The defendant was not seized within the meaning of the Fourth Amendment by being pursued by a police officer.

DISCUSSION: No seizure occurs under the Fourth Amendment when police seek to apprehend a person through a show of authority, and the person does not submit. To constitute a seizure of a person under Fourth Amendment there must be either:

1. The application of force, however slight; or
2. Submission to an officer's "show of authority" to restrain the subject's liberty.

In this case, no physical force was applied nor did the defendant submit to the officer's show of authority before dropping the drugs. In fact, he was not seized until he was tackled. Therefore, the defendant abandoned the cocaine while he was running, and it was admissible against the defendant.

II. THE FOURTH AMENDMENT: THE PREFERENCE FOR A WARRANT

A. THE FOURTH AMENDMENT

Coolidge v. New Hampshire
403 U.S. 443, 91 S.Ct. 2022 (1971)

FACTS: Police went to the defendant's house on January 28th to question him about a murder. In the course of their inquiry he showed them three guns and he agreed to take a lie-detector test on February 2nd. The test was inconclusive. However, the defendant did admit to a theft. Other police officers went to the defendant's house to corroborate his admission to the theft. Unaware of the visit of the other officers who had been shown the guns and knowing little about the murder weapon, the police asked about any guns there might be in the house. The defendant's wife showed them four weapons which she offered to let them take. The police took the weapons and several articles of clothing acquired in the same manner. One of the guns was later determined to be the murder weapon.

ISSUE: Whether the murder weapon and the clothing were obtained through an illegal search?

HELD: No. This evidence was obtained through private actions.

DISCUSSION: The Fourth Amendment controls governmental actions. The Fourth Amendment was not

implicated in the February 2nd visit when the police obtained the guns and clothing from the defendant's wife. The police exerted no effort to coerce or dominate her, and were not obligated to refuse her offer to take the guns. In making these and other items available to the police, she was not acting as an instrument or agent of the police. The items were secured through private actions.

B. THE EXCLUSIONARY RULE

1. DEVELOPMENT OF THE RULE SINCE 1914

Weeks v. United States
232 U.S. 383, 34 S.Ct. 341 (1914)

FACTS: The defendant was arrested without a warrant at his place of employment. Other police officers went to his home, and after being told by a neighbor where the key was kept, entered the house. They searched and found evidence of gambling paraphernalia which was turned over to the U.S. Marshal. Later that day, the Marshal, hoping to find additional evidence, returned to the house. He searched it and found additional evidence. Neither the Marshal nor police had a search warrant. This evidence was used to convict the defendant of using the mails to transport gambling paraphernalia.

ISSUE: Whether the evidence seized by the U.S. Marshal admissible?

HELD: No. The evidence seized by the U.S. Marshal is not admissible.

DISCUSSION: The evidence was seized by an official of the U.S. acting under the color of his office in direct violation of the constitutional rights of the defendant. In this case, the defendant made a timely application for the return of his property before the trial. The Supreme Court held that the federal government should not be able to use unreasonably obtained evidence in a federal courtroom. However, the fruits of the first search conducted by the state officers was admissible. "As the Fourth Amendment is not directed to the individual misconduct of such officials," the fruits of the state search were admissible in a federal trial.

Elkins v. United States
364 U.S. 206, 80 S.Ct. 1437 (1960)

FACTS: State officers, having received information that defendants had in their possession obscene motion pictures, obtained a search warrant for the defendant's house. The search revealed no obscene pictures. However, the officers did find various paraphernalia believed to have been used in making illegal wiretaps. The search was held to be illegal under state law. During the course of these state proceedings, federal officers, acting under a federal search warrant, obtained the items in state custody. Shortly thereafter, the state case was abandoned, and a federal indictment was returned.

ISSUE: Whether evidence obtained as a result of an unreasonable search and seizure by state officers, without involvement of federal officers, is admissible in a federal criminal trial?

HELD: No. Evidence obtained as a result of an unreasonable search and seizure by state officers is inadmissible in a federal criminal trial.

DISCUSSION: The exclusionary rule is calculated to prevent, not repair. Its purpose is to deter - to compel

respect for the constitutional guaranty to be free from unreasonable searches in the only effective way - by removing the incentive to disregard it. Evidence obtained by state officers during a search which, if conducted by federal officers, would have violated the Fourth Amendment, is inadmissible in a federal criminal trial.

Mapp v. Ohio
367 U.S. 643, 81 S.Ct 1684 (1961)

FACTS: Three police officers arrived at defendant's residence pursuant to information that "a person [was] hiding out in the home, who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home." The officers knocked on the door and demanded entry. The defendant, after telephoning her attorney, refused to admit them without a search warrant.

Three hours later, the officers (now with four additional officers) again sought entry. When the defendant did not come to the door immediately, at least one of the doors to the house was forcibly opened. It appeared that the defendant was halfway down the stairs from the upper floor to the front door when the officers broke into the hall. She demanded to see the search warrant. A paper the officers claimed to be a warrant, was held up by one of the officers. The defendant grabbed the "warrant" and placed it in her bosom. A struggle ensued in which the officers recovered the piece of paper. They handcuffed the defendant because she had been "belligerent" in resisting their official rescue of the "warrant" from her person. Running roughshod over the defendant, a policeman "grabbed" her, "twisted" [her] hand, and she "yelled [and] pleaded with him" because "it was hurting."

During this encounter the defendant's lawyer arrived at the residence. He was neither permitted to see his client, nor allowed to enter the house.

The obscene materials for which she was ultimately convicted of possession were discovered in the course of a widespread search. At trial, no search warrant was produced, nor was the failure to produce one explained or accounted for.

ISSUE: Whether the exclusionary rule applies to state actions?

HELD: Yes. The exclusionary rule applies to state actions.

DISCUSSION: The exclusionary rule is of constitutional dimensions. All evidence obtained by searches and seizures in violation of the Constitution, is by that same authority, inadmissible in a state court. This overruled *Wolf v. Colorado*, 338 U.S. 25, 69 S.Ct. 1359 (1949). The Fourth Amendment right of privacy is enforceable against the states through the due process clause of the Fourteenth Amendment.

2. FRUIT OF THE POISONOUS TREE

Silverthorne Lumber Co. v. United States
251 U.S. 385, 40 S.Ct. 182 (1920)

FACTS: Silverthorne was indicted and arrested. While he was being detained, Department of Justice representatives and the U. S. Marshal went to his corporate office and, without authority, made a clean sweep of the records. These records were then copied. The District Court ordered the original records returned. Based

on these copies, a new indictment was obtained, and a subpoena for the original records was issued.

ISSUES: 1. Whether the government can use information obtained from an illegal search and seizure to secure other evidence?

2. Whether corporations are protected against unlawful searches and seizures?

HELD: 1. No. The government may not use evidence illegally obtained for the purpose of gaining other evidence.

2. Yes.

DISCUSSION: Information gained by the government's unlawful search and seizure may not be used as a basis to subpoena the records. The essence of a provision forbidding the acquisition of evidence in an illegal way is that it shall not be used at all. This is the "Fruit of the Poisonous Tree" doctrine. Law enforcement officers are prohibited from doing indirectly what they are prohibited from doing directly. The rights of a corporation against an unlawful search and seizure is to be protected even if the same result could have been achieved in a lawful way.

Wong Sun v. United States
371 U.S. 471, 83 S.Ct. 407 (1963)

FACTS: Federal narcotics agents arrested Hom Way and found heroin in his possession. Hom Way, who had never been an informant before, stated that he had bought an ounce of heroin the night before from "Blackie Toy," a proprietor of a laundry.

This information let to the illegal seizure of James Wah Toy. During this illegal seizure one of the agents said to Toy ". . . Hom Way says he got narcotics from you." Toy responded, "No, I haven't been selling narcotics at all. However I do know somebody who has." Toy described a house on Eleventh Avenue where Johnny, the seller, lived. He also described a bedroom in the house where he said "Johnny kept a piece" of heroin, and where he and Johnny had smoked some of the drug the night before. This information led to the illegal search and seizure of Johnny Yee's premises, where heroin was discovered. Yee stated that the heroin had been brought to him four days earlier by Toy and Wong Sun.

Some agents took Toy to the defendant's neighborhood where Toy pointed out a multifamily dwelling where he said the defendant lived. Agent Wong rang a door bell and identified himself as a narcotics agent to the woman on the landing and asked for "Mr. Wong." The woman was the wife of the defendant. She said that he was "in the back room sleeping." Agent Wong and six other officers climbed the stairs and entered the apartment. One of the officers went into the back room and brought the defendant from the bedroom in handcuffs. A thorough search of the apartment followed, but no narcotics were discovered. Wong Sun made incriminating statements.

The defendant was tried for distribution of narcotics. The trial court admitted the government's evidence over the objections by the defense that the following items were "fruits of unlawful arrests and searches: (1) the statements made orally by Toy in his bedroom at the time of his arrest; (2) the heroin surrendered to the agents by Johnny Yee; (3) Toy's pretrial unsigned statement; and (4) Wong Sun's similar statement.

ISSUE: Whether the four items of evidence are admissible against the defendant Wong Sun?

HELD: Yes. The statements, drugs and confession are admissible against defendant Wong Sun.

DISCUSSION: A search which is unlawful at its inception is not validated by what is discovered in that search. However, even though contraband seized by officers is inadmissible against one defendant, it is admissible against another who has not suffered an invasion of his privacy.

"The exclusionary rule has no application because the Government learned of the evidence from an independent source. . . . We need not hold that all evidence is the fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint."

United States v. Ceccolini
435 U.S. 268, 98 S.Ct. 1054 (1978)

FACTS: The FBI was investigating gambling in the defendant's place of business. A full year after the surveillance was discontinued, a police officer, while taking a break in defendant's flower shop, "tarried" behind the customer counter, and conversed with an employee of the shop. He noticed an envelope with money protruding on the cash register. Upon examination, he found it contained money and policy slips. The officer then placed the envelope back on the register and, without telling the employee what he had found, asked her to whom the envelope belonged. She said it belonged to the defendant and that she had instructions to give it to someone. The officer's finding was reported to local detectives and to the FBI. Four months later, they interviewed the employee. Six months later the defendant testified before the grand jury that he had never taken policy bets at his shop. The employee testified to the contrary, and defendant was indicted for perjury.

ISSUES: Whether the employee's testimony was inadmissible as "fruit of the poisonous tree?"

HELD: No. The employee's testimony was not inadmissible as "fruit of the poisonous tree."

DISCUSSION: The degree of attenuation between the police officer's illegal search and the store clerk's testimony as to the defendant's activities was sufficient to dissipate the connection between illegality and testimony so as to render the testimony admissible. A substantial period of time elapsed between the illegal search and initial contact with the store clerk who was present at the time of the search. The clerk's testimony was an act of her own free will and was not coerced or induced by official authority as a result of the illegal search.

The Court rejected the Government's suggestion to adopt a per se rule that the testimony of live witnesses should not be excluded at trial no matter how close and proximate the connection between it and a violation of the Fourth Amendment.

United States v. Crews
445 U.S. 463, 100 S.Ct. 1244 (1980)

FACTS: On January 3rd, a woman was accosted and robbed at gunpoint by a young man in the women's restroom on the grounds of the Washington Monument.

On January 6th, two other women were assaulted and robbed in a similar way in the same restroom.

Three days later, a United States Park Police Officer observed the defendant in the areas of the Washington Monument concession stand and restrooms. Aware of the assaults and robberies of the previous week and noting defendant's resemblance to the police "lookout" that described the perpetrator, the officer and his partner approached defendant. Defendant gave the officer his name and said that he was sixteen years old. When asked why he was not in school, the defendant replied that he just walked away from school. The officer informed the defendant of his likeness to the suspect's description, but there was no further questioning about those events. The defendant was allowed to leave, and the officer watched as he entered the nearby restrooms.

While the defendant was still inside, the officer spoke to a tour guide who had previously reported having seen a young man hanging around the area of the Monument on the day of the January 3rd robbery. The guide tentatively identified the defendant as he left the restroom as the individual he had seen on the day of the first robbery.

On the basis of this additional information, the officers detained the defendant and summoned the detective assigned to the robberies. Upon his arrival ten to fifteen minutes later, he attempted to take a Polaroid photograph of the defendant, but could not as the inclement weather interfered with the camera. The defendant was then taken into custody, ostensibly because he was a suspected truant. The officers took a photograph of the defendant at the station.

The following day, the police showed the first victim a photo display including one of the defendant. Although she had previously viewed over a hundred pictures of possible suspects without identifying any of them she immediately selected the defendant as her assailant. On January 13th, one of the other women made a similar identification. The defendant was arrested. At a court ordered lineup held on January 21st, he was positively identified by the two women who had previously made the photographic identifications.

The trial court held that the defendant was illegally arrested. The photograph and the lineup identification were to be suppressed, both being a fruit of the illegal arrest. However, the defendant was identified in-court by the same two victims.

ISSUE: Whether the in-court identification was tainted by the identifications made through the illegal seizure?

HELD: No. The in-court identification was not tainted by the identifications made through the illegal seizure.

DISCUSSION: The victim's presence in the courtroom is not traceable to any police misconduct violative of the Fourth Amendment. The victim's identity was known by the police prior to the arrest and was not discovered as a result of the unlawful arrest. Also, the victim's capacity to identify the perpetrator of the crime was not biased by the unlawful police conduct occurring after the victim had developed the capacity to make such identification.

"The exclusionary rule enjoins the Government from benefitting from evidence it has unlawfully obtained; it does not reach backward to taint information that was in official hands prior to any illegality. . . . The pretrial identification obtained through use of the photograph taken during defendant's illegal detention cannot be introduced; but the in-court identification is admissible...because the police's knowledge of defendant's identity and the victim's independent recollections of him both antedated the unlawful arrest and were thus untainted by the constitutional violation."

C. EXCEPTIONS

1. NO STANDING TO OBJECT

United States v. Salvucci, Jr.
448 U.S. 83, 100 S.Ct. 2547 (1980)

FACTS: The defendant and Zackular were charged with unlawful possession of stolen mail. The twelve checks which formed the basis of the indictment had been seized by the Massachusetts police during the search (with a search warrant) of an apartment rented by Zackular's mother.

The defendant moved to suppress the checks on the ground that the affidavit supporting the application for the search warrant was inadequate to show probable cause.

ISSUE: Whether the defendants have standing to object to the search of the apartment?

HELD: No. Defendants charged with crimes of possession may claim the benefits of the exclusionary rule only if their Fourth Amendment rights have been violated.

DISCUSSION: Legal possession of a seized good is not a proxy for determining whether the owner had a Fourth Amendment interest. Property ownership is a factor to be considered in determining whether an individual's Fourth Amendment rights have been violated. Possession of a good may not be used as a substitute for a factual finding that the owner had a legitimate expectation of privacy in the area searched.

Minnesota v. Carter
525 U.S. 83, 119 S.Ct. 469 (1998)

FACTS: While the defendant and another party, the lessee of an apartment, bagged cocaine in the apartment, a law enforcement officer observed this activity by looking through a drawn window blind. The defendant did not live in the apartment, he had never visited that apartment before and his visit only lasted a matter of hours. His singular purpose in being there was to package cocaine. The defendant was arrested for conspiracy to commit a controlled substance crime. He complained that the information that led to his arrest was the product of an unreasonable search. The Supreme Court of Minnesota overturned his conviction by finding that the defendant had a legitimate expectation of privacy in the apartment, and therefore had standing to object to the unreasonable search.

ISSUE: Whether a visitor enjoys a reasonable expectation of privacy in a premises visited for commercial reasons?

HELD: No. A visitor does not enjoy a reasonable expectation of privacy in a premises visited for

commercial reasons.

DISCUSSION: The Supreme Court distinguished the defendant's presence in this apartment from the social, overnight guests' presence in *Minnesota v. Olson*. In *Olson*, the Court held that a guest staying overnight in another's home had a reasonable expectation of privacy. The defendant in *Carter* however, went to the apartment for a business transaction, where he was present for only a matter of hours. He did not have a previous relationship with the lessee of the apartment, nor did he have a connection to the apartment similar to that of an overnight guest. While, the apartment was a dwelling for the lessee, the property was equivalent to a commercial site as to the defendant. Lacking a significant connection to the property, defendant did not have standing to object to the search conducted on that premises.

Rakas v. Illinois
439 U.S. 128, 99 S.Ct. 421 (1978)

FACTS: After receiving a robbery report, police stopped the suspected getaway car being driven by the owner and in which defendants were passengers. After the occupants were ordered out of the car, two officers searched the interior of the vehicle. They discovered a box of rifle shells in the glove compartment, which had been locked, and a sawed-off rifle under the front passenger seat. Defendants were then arrested.

Defendants conceded that they did not own the automobile and were simply passengers. They did not assert ownership of the rifle or the shells seized.

ISSUES: 1. Whether the defendants have standing to object to the search of the vehicle?

2. Whether the defendants have reasonable expectation of privacy in the interior of the vehicle?

HELD: 1. No. 2. No.

DISCUSSION: Defendants admitted they had neither a property nor a possessory interest in the automobile. They had no interest in the property seized, and they failed to show any reasonable expectation of privacy in the glove compartment or under the seat of the vehicle in which they were passengers. Therefore, they were not entitled to challenge the search of those areas. The defendants lacked standing to challenge the search.

Rawlings v. Kentucky
448 U.S. 98, 100 S.Ct. 2556 (1980)

FACTS: Police officers, armed with an arrest warrant for Marquess, lawfully entered his house. Another resident of the house and four visitors (including the defendant) were present. While searching the house unsuccessfully for Marquess, several officers smelled marihuana smoke and saw marihuana seeds. Two officers left to obtain a warrant to search the house, and the other officers detained the occupants, allowing them to leave only if they consented to a body search. About forty-five minutes later, the officers returned with the search warrant. Cox, an occupant, was ordered to empty her purse, which contained illegal drugs. Cox told the defendant, who was standing nearby, "to take what was his." He immediately claimed ownership of the drugs.

ISSUES: Whether the defendant had a reasonable expectation of privacy in Cox's purse?

HELD: No. The defendant did not have a reasonable expectation of privacy in Cox's purse.

DISCUSSION: The defendant did not sustain his burden of proving that he had a reasonable expectation of privacy in Cox's purse. Therefore, he had no standing to object to the search of the purse. The fact that the defendant claimed ownership of the drugs in the purse did not entitle him to challenge the legality of a search of the purse. Even assuming that police violated the Fourth and Fourteenth Amendment rights of the defendant and Cox by detaining them while a search warrant was obtained, exclusion of the defendant's admissions would not be necessary unless his statements were the result of his illegal detention.

United States v. Payner
447 U.S. 727, 100 S.Ct. 2439 (1980)

FACTS: The Internal Revenue Service launched an investigation into the financial activities of American citizens in the Bahamas. Suspicion was focused on the Castle Bank. An IRS agent asked Casper, a private investigator and occasional informant, to learn what he could about the Castle Bank. Casper cultivated a friendship with a Castle Bank Vice President. Casper introduced the Vice President to Sybol Kennedy, a private investigator and former employee. When Casper learned that the Vice President intended to spend a few days in Miami, he devised a scheme to gain access to the bank records he knew the Vice President could be carrying in his briefcase. The IRS agent approved the basic outline of the plan.

The Vice President arrived in Miami and went directly to Kennedy's apartment. Shortly after the two left for dinner, Casper entered the apartment using a key supplied by Kennedy. He removed the briefcase and delivered it to the agent. While the agent supervised the photocopying of approximately 400 documents taken from the briefcase, a "lookout" observed Kennedy and the Vice President at dinner. The observer notified Casper when the pair left the restaurant, and the briefcase was replaced.

The documents photocopied led to the defendant's indictment of falsifying his income tax return. The defendant had denied he maintained a foreign bank account.

ISSUES: 1. Whether the defendant has standing to object to the illegal search and seizure of the Vice President briefcase?

2. Whether the defendant's right to due process had been violated by the gross illegality of the government?

HELD: 1. No. Defendant may not block the admission of evidence derived through violations of the constitutional rights of others.

2. No.

DISCUSSION: The defendant has no reasonable expectation of privacy in the Castle Bank documents seized from the Vice President. He did not own nor have any control over the briefcase. Therefore, he has no standing to object to the illegal search and seizure.

Although courts should not condone unconstitutional and possible criminal behavior on the part of government agents, such behavior does not demand the exclusion of evidence in every case of illegality. Rather, the applicable principles must be weighed against the considerable harm that would flow from indiscriminate application of the exclusionary rule.

2. GOOD FAITH EXCEPTION

United States v. Leon
468 U.S. 897, 104 S.Ct. 3405 (1984)

FACTS: Based on an affidavit summarizing an investigation, one officer prepared an application for a warrant to search three residences and defendant's automobiles. The application was reviewed by several Deputy District Attorneys, and approved by a state court judge. The ensuing searches produced large quantities of drugs. The defendants were indicted and filed motions to suppress the evidence seized.

The District Court granted the motions in part, concluding that the affidavit was insufficient to establish probable cause. The District Court recognized that the searching officer acted in good faith, but refused to recognize a good-faith exception to the exclusionary rule.

ISSUES: Whether a good faith exception to the exclusionary rule exists?

HELD: Yes. A good faith exception to the exclusionary rule exists.

DISCUSSION: The Fourth Amendment exclusionary rule should not be applied to evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate. Reasonable minds frequently may differ on the question of whether a particular search warrant affidavit establishes probable cause. However, deference to a magistrate in search warrant matters is not boundless. A reviewing court's deference to a finding of probable cause does not preclude inquiry into the knowing or reckless falsity of the affidavit on which probable cause was based. A magistrate must purport to perform his neutral and detached function and not serve merely as a rubber stamp for the police. He cannot provide valid authorization for an otherwise unconstitutional search. Suppression is an appropriate remedy if the magistrate in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth.

Massachusetts v. Sheppard
468 U.S. 981, 104 S.Ct. 3424 (1984)

FACTS: The defendant became a suspect in a murder case. On the basis of an investigation, a police officer drafted an affidavit for a search warrant for the defendant's house. Because it was a Sunday, the local court was closed, and the police had a difficult time finding a warrant application form. One officer found a warrant form for a controlled substances violation. He proceeded to make changes in the form to adapt it to his search but he failed to delete the reference to "controlled substance."

The officer took the affidavit form to the residence of a judge. He told the judge that the form as presented dealt with controlled substances. He showed the judge where he had crossed out subtitles. After unsuccessfully searching for a more suitable form, the judge said he would make the necessary changes. The judge then took the form, made some changes on it, and then signed it. However, he did not change the section which authorized a search for controlled substances.

The police searched the defendant's house and found several incriminating items of evidence. At a pretrial suppression hearing, the trial judge concluded that the warrant violated the Fourth Amendment because it did not particularize the items to be seized. However, he admitted the evidence notwithstanding the defect because the police had acted in good faith. The defendant was convicted. On appeal, the Supreme Court of Massachusetts reversed.

ISSUES: 1. Whether the officers reasonably believed that the search they conducted was authorized by a valid warrant?

2. Whether Federal law requires the exclusion of the disputed evidence?

HELD: 1. Yes. 2. No.

DISCUSSION: Citing *United States v. Leon*, the Supreme Court held that the exclusionary rule should not be applied when the officer conducting the search acted in an objectively reasonable reliance on a warrant issued by a neutral and detached magistrate. The officers took every necessary step that the Court could reasonably expect of them. The affidavit was reviewed by the District Attorney, and it was presented to a neutral judge who concluded that it established probable cause. As long as the officers reasonably concluded the warrant was properly issued, their reliance on it was justified.

Arizona v. Evans
514 U.S. 1, 115 S.Ct. 1185 (1995)

FACTS: Defendant was arrested during a routine traffic stop when a patrol car's computer indicated that there was an outstanding warrant for his arrest. The warrant should have previously been removed from the computer database. A subsequent search of the automobile incident to the arrest revealed a bag of marijuana. The defendant was charged with possession of a controlled substance. He moved to suppress the marijuana as it was the fruit of an unlawful arrest.

ISSUE: Whether the fruit of the poisonous tree doctrine is applicable when the officer acted in good faith reliance on a computer warrant database?

HELD: No. The fruit of the poisonous tree doctrine is not applicable when the officer acted in good faith reliance on a computer warrant database.

DISCUSSION: The exclusionary rule's purpose is not served by excluding evidence obtained through an error by employees not directly associated with the police department. The Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands. The exclusionary rule is a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through its deterrent effects. Where the rule does not result in deterrence, its use is unwarranted.

Under the framework of the good faith exception to the exclusionary rule established by *United States v. Leon*, the rule does not require the suppression of evidence seized because of clerical errors of court employees. The issue of exclusion is separate from the issue of whether the Fourth Amendment has been violated. Exclusion is appropriate only if the remedial objectives of the rule are served.

The exclusionary rule is historically designed as means of deterring police misconduct, not mistakes of court employees.

3. IMPEACHMENT PURPOSES

Walder v. United States
347 U.S. 62, 74 S.Ct. 354 (1954)

FACTS: The defendant testified at his trial on the charge of sale of narcotics that he never sold or possessed narcotics. The government then introduced evidence that a heroin capsule had been found in his possession. The trial judge admitted this evidence over the defendant's objection that the heroin capsule had been obtained through an unlawful search and seizure.

ISSUE: Whether unconstitutionally seized evidence is admissible for impeachment purposes?

HELD: Yes. Unconstitutionally seized evidence is admissible for impeachment purposes.

DISCUSSION: The government cannot, through its agents, violate the Fourth Amendment and use the fruits of such unlawful conduct to secure a conviction. Nor can it make indirect use of such evidence in order to secure a conviction or support a conviction on evidence obtained through leads from the unlawfully obtained evidence.

However, while the government cannot make affirmative use of this evidence, the defendant cannot turn the existence of such evidence to his own advantage by using it as a shield against contradiction of untrue statements made by him on direct examination. Defendant's assertion on direct examination that he had never possessed any narcotics opens the door, solely for the purpose of attacking his credibility. The evidence can be used for impeachment purposes.

James v. Illinois
493 U.S. 307, 100 S.Ct. 648 (1990)

FACTS: The defendant, a murder suspect, told police, without first being advised of his Miranda warnings, that on the day of the murder his hair had been reddish-brown and slicked-back, and that the next day he had it dyed black and curled. At trial the defendant did not testify, but called as a witness a family friend. The witness testified that the defendant’s hair had been black on the day of the shooting. Witnesses

for the prosecution however, testified that the murderer had “reddish” slicked-back hair. The State sought to introduce defendant’s illegally obtained statement to the police as a means of impeaching the credibility of the defense, witness testimony.

ISSUE: Whether illegally obtained evidence may be used to impeach a defense witness?

HELD: No. Evidence illegally obtained may not be used to impeach a defense witness other than the defendant.

DISCUSSION: Expanding the impeachment exception to all defense witnesses would have a chilling effect on a defendant’s ability to present his defense.

First, a defendant would be concerned that hostile witnesses called by him might willingly invite impeachment, and that friendly witnesses might, through simple carelessness, subject themselves to impeachment. Thus, expanding the impeachment exception to encompass the testimony of all defense witnesses likely would chill some defendant’s from calling witnesses who would otherwise offer probative evidence.

Second, whereas the defendant himself rarely fears a perjury prosecution since the substantive charge against him is usually much more compelling, a witness other than the defendant will normally fear a prosecution for perjury. The need to deter perjured testimony is less than where the witness is the defendant himself.

Third, expansion of the exception would also significantly weaken the exclusionary rules’ deterrent effect on police misconduct by opening the door inadvertently to admission of any illegally obtained evidence. This expansion would therefore enhance the expected value to the prosecution of illegally obtained evidence by increasing the number of occasions on which such evidence could be used and by keeping exculpatory evidence from the jury.

4. INEVITABLE DISCOVERY

Nix v. Williams
467 U.S. 431, 104 S.Ct. 2501 (1984)

FACTS: On December 24, 1968, ten year old Pamela Powers disappeared from a YMCA building in Des Moines, Iowa, where she had accompanied her parents to watch an athletic contest. Shortly after she disappeared, the defendant was seen leaving the YMCA carrying a large bundle wrapped in a blanket. A fourteen year old boy who had helped the defendant open his car door reported that he had seen "two legs in it and they were skinny and white."

The defendant’s car was found the next day 160 miles away in Davenport, Iowa. Later, several items of clothing belonging to the child, some of the defendant’s clothing, and an army blanket similar to the one used to wrap the bundle that the defendant carried out of the YMCA, were found at a rest stop. A warrant was issued for the defendant’s arrest.

Police surmised that the defendant had left Pamela Powers or her body somewhere between Des Moines and the rest stop. On December 26, they initiated a large-scale search. Two hundred volunteers divided into teams and began to search. Searchers were instructed to check all roads, abandoned farm

buildings, ditches, culverts, and any other place in which the body of a small child could be hidden.

Meanwhile, the defendant surrendered to local police in Davenport, where he was promptly arraigned. Des Moines police informed his counsel that they would pick up the defendant in Davenport and return him to Des Moines without questioning him.

During the return trip, one of the policemen, began a conversation with the defendant, saying:

"I want to give you something to think about while we're traveling down the road. . . . They are predicting several inches of snow for tonight, and I feel that you yourself are the only person that knows where this little girl's body is. . . and if snow gets on top of it you yourself may be unable to find it. And since we will be going right past the area (where is body is) on the way into Des Moines, I feel that we could stop and locate the body, and the parents of this little girl should be entitled to a Christian burial for the little girl who was snatched away from them on Christmas Eve and murdered. . . . After a snow storm we may not be able to find it at all."

The officer told the defendant he knew the body was in the area of Mitchellville–a town they would be passing on the way to Des Moines. He concluded the conversation by saying: "I do not want you to answer me. . . . Just think about it. . . ."

Later, as the police car approached the search scene, the defendant asked the officer whether the police had found the young girl's shoes. The officer replied that he was unsure. The defendant directed the police to a point near a service station where he said he had left the shoes; they were not found. As they continued the drive to Des Moines, the defendant asked whether the blanket had been found and then directed the officers to a rest area where he said he had disposed of the blanket; they did not find the blanket. At this point the officer and his partner were joined by the officers in charge of the search. As they approached Mitchellville, the defendant, without any further conversation, agreed to direct the officers to the child's body.

At that time, one search team was only two and one-half miles from where the defendant soon guided the officer and his party to the body. The child's body was found next to a culvert in a ditch beside a gravel road essentially within the search area.

ISSUE: Whether the body and evidence derived from the body was admissible?

HELD: Yes. The body and evidence derived from the body was admissible.

DISCUSSION: The Court held that "when the challenged evidence has an independent source, exclusion of such evidence would put the police in a worse position than they would have been in absent any error or violation. There is a functional similarly between these two doctrines in that, exclusion of evidence that would inevitably have been discovered would also put the government in a worse position, because the police would have obtained that evidence if no misconduct had taken place. Thus, while the independent source exception would not justify the admission of evidence in this case, its rationale is wholly consistent with and justifies our adoption of the ultimate or <u>inevitable discovery</u> [emphasis added] exception to the Exclusionary rule."

Unlawfully obtained evidence is admissible if ultimately or inevitably it would have been

discovered by lawful means.

5. GRAND JURY

United States v. Calandra
414 U.S. 338, 94 S.Ct. 613 (1974)

FACTS: Federal agents obtained a warrant authorizing a search of the defendant's place of business for evidence of illegal gambling operations. The warrant specified the object of the search was bookmaking records and wagering paraphernalia. An affidavit submitted in support of the application for the warrant contained information derived from statements by confidential informants to the FBI, physical surveillance conducted by FBI agents, and court-authorized electronic surveillance. The search did not revealed any gambling paraphernalia. However, one agent discovered a card indicating that Dr. Walter Loveland had been making periodic payments to the defendant. The agent stated in an affidavit that he was aware that the U.S. Attorney's Office was investigating possible violations of extortionate credit transactions, and that Dr. Loveland had been the victim of a "loansharking" enterprise then under investigation. The discovery of this evidence exceeded the scope of the search warrant. Nonetheless, the defendant was subpoenaed by a special Grand Jury convened to investigate the proliferation of “loansharking” activities. The defendant refused to respond on the grounds that the information identifying him with these activities had been illegally obtained.

ISSUE: Whether Grand Jury witnesses can refuse to answer questions on the ground that they were based on illegally seized evidence?

HELD: No. The Grand Jury may question the witness based on the illegally obtained material, and the witness may not refuse to answer on those grounds.

DISCUSSION: Grand Jury questions, based on evidence obtained from an illegal search and seizure, do not themselves constitute fresh and independent violations of the witness' Fourth Amendment rights, since such questions involve no independent governmental invasion of one's privacy. The exclusionary rule does not extend to grand jury proceedings. This is because allowing the grand jury witness to invoke the exclusionary rule would unduly interfere with the effective and expeditious discharge of the grand jury's duties, and would achieve only a speculative and minimal advance of the rule's purpose of deterring police that disregard Forth Amendment requirements.

6. FOREIGN SEARCHES

United States v. Verdugo-Urquidez
494 U.S. 259, 110 S.Ct. 1056 (1990)

FACTS: Defendant was a citizen and resident of Mexico. A warrant for his arrest for narcotic-related offenses was issued on August 3, 1985. In January 1986, he was arrested by Mexican officials and turned over to U.S. Marshals in California. Following the arrest, a DEA Agent in concert with mexican law enforcement searched the defendant's residences located in Mexico. The agent believed the searches would reveal evidence of defendant's narcotics trafficking and his involvement in the torture-murder of a DEA Agent. Arrangements were made with appropriate Mexican officials who authorized the searches. Thereafter, DEA Agents working in concert with Mexican "Federales" searched the defendant's properties in Mexico. One search uncovered a tally sheet, which the government believed reflected the quantities of marijuana smuggled by defendant into the U.S.

ISSUE: Whether the Fourth Amendment applies to the search and seizure by U.S. agents of property that is owned by a foreign national and located in a foreign country?

HELD: No. The Warrant Clause has no applicability to searches of non U.S. citizens' homes located in foreign jurisdictions because U.S. magistrates have no power to authorize such searches.

DISCUSSION: The Fourth Amendment does not apply where American officers search a foreign national who has no “substantial connections” with the United States and where the search takes place outside the United States. The term "the people" refers to a class of persons who are part of a national community or who have otherwise developed sufficient ties with this country to be considered part of that community. "The people" are protected by the Fourth Amendment. This language contrasts with the words "person" and "accused" used in the Fifth and Sixth Amendments regulating procedure in criminal cases.

When the search of his house in Mexico took place, the defendant had been present in the U.S. for only a matter of days. Application of the Fourth Amendment to these circumstances could significantly disrupt the ability of the political branches of government to respond to foreign situations involving our national interest. The Fifth and Sixth Amendments are different from the Fourth Amendment. They are fundamental trial rights; a violation occurs only at trial. A violation of the Fourth Amendment is fully accomplished at the time of an unreasonable intrusion by government agents. Therefore, any possible Fourth Amendment violation occurred in Mexico.

The purpose of the Fourth Amendment is to protect the people of the United States against arbitrary action by their own government. It was never intended to restrain the actions of the federal government against aliens outside of the United States territory.

The absence of local judges or magistrates available to issue warrants, the differing and perhaps unascertainable conceptions of reasonableness and privacy that prevail abroad, and the need to cooperate with foreign officials all indicate that the Fourth Amendment warrant requirement should not apply abroad.

Aliens who are lawfully present in the U.S. are entitled to the protection of the Fourth Amendment. This includes the defendant. However, the search conducted by U.S. agents with the approval and cooperation of the Mexican authorities is not "unreasonable" under the Fourth Amendment.

United States v. Marzano
537 F.2d 257 (7th Cir. 1976)

FACTS: Within ten days of the theft of $3 million, the FBI traced the defendant to Grand Cayman Island. A detective of the Grand Cayman Police agreed to meet two FBI agents who were attempting to locate the defendant. The detective told the agents that they had no jurisdiction and could not take the defendant into custody or speak to the defendant about the crime. They could, however, accompany the detective on his investigation. The defendant was subsequently taken into custody by the detective for various infractions of Grand Cayman law. Money and other items were taken from him during a search.

ISSUE: Whether the government (FBI) had participated in the search of the defendant so as to render it a "government search," and, therefore, suppress the use of the items taken from the defendant?

HELD: No. The mere presence of federal officers is not sufficient to make the officers participants in the search.

DISCUSSION: The Fourth Amendment only applies to governmental action. Information obtained by a private individual is usable if government agents did not participate in the search. The same standard applies when foreign law enforcement personnel obtain evidence.

The participation of federal agents must be so substantial as to convert the search into a joint venture. Examining the circumstances of this case, the involvement by FBI agents was too insignificant for the agents to be considered participants in the search by the detective. Providing information to a foreign functionary is not sufficient involvement for the government to be considered a participant in acts the foreign functionary takes based upon that information. While FBI agents were present during the investigation and search, there is no evidence that they took an active part in interrogating or searching the defendant or in selecting evidence to seize.

United States v. Mount
757 F.2d 1315 (D.C. Cir. 1985)

FACTS: The defendant, a U.S. citizen, was arrested by British police officers in England for failing to return a rental car on time. While he was searched at the station, the officers searched his residence twice. At his residence, the officers discovered five different U.S. passports, all with different names. The passports were subsequently turned over to U.S. authorities. However, U.S. officials did not become involved in the defendant's problems with the British police until after the searches of his residence had been completed.

ISSUE: Whether the use of the passports and other evidence seized as a result of the searches of the defendant's residence and subsequently furnished to U.S. authorities violated the Fourth Amendment's exclusionary rule?

HELD: No. The exclusionary rule applies to a foreign search only if U.S. officials or officers participated in some significant way.

DISCUSSION: The purpose of the exclusionary rule is to deter unlawful police conduct. However, the

Fourth Amendment does not apply to foreign searches conducted by foreign officials. The exclusionary rule applies to foreign searches only if U.S. officials or officers participated in some significant way. In this case, there was no U.S. participation.

III. REASONABLE EXPECTATION OF PRIVACY

Katz v. United States
389 U.S. 347, 88 S.Ct. 507 (1967)

FACTS: The defendant was convicted of transmitting wagering information out of state. At the trial, the Government was permitted to introduce evidence of the defendant's end of telephone conversations, overheard by FBI agents who had attached an electronic listening and recording device to the outside of a public telephone booth from which the defendant had placed his calls.

ISSUE: Whether the agents' actions amounted to a Fourth Amendment search?

HELD: Yes. The agents' actions amounted to a Fourth Amendment search.

DISCUSSION: A person in a telephone booth may rely upon the protection of the Fourth Amendment, and is entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world. What a person seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected under the Fourth Amendment.

The Court held that a "search" takes place whenever the government intrudes on a reasonable expectation of privacy. The Court concluded that the defendant's expectation of privacy was reasonable if: he had taken measures to secure his privacy and the defendant's expectation of privacy met community standards.

Once the defendant established he met both of these prongs any government intrusion into these areas must meet Fourth Amendment standards. The Fourth Amendment demands that all searches be reasonable. Searches conducted without a warrant are presumed to be unreasonable, except for some limited well-delineated exceptions.

Hoffa v. United States
385 U.S. 293, 87 S.Ct. 408 (1966)

FACTS: James Hoffa, President of Teamsters Union, was on trial in Federal Court for labor racketeering. During the trial, he occupied a three room suite in the Andrew Jackson Hotel. Several friends and fellow teamster officials were his constant companions during the trial. One companion, Edward Partin, was a teamster official and an FBI informer.

During the trial, Hoffa told Partin that he was attempting to bribe jurors to insure that he at least got a hung jury. Hoffa made many incriminating statements. Partin reported these statements to the FBI. As Hoffa predicted, the jury failed to reach a verdict in the case and a mistrial was declared. Hoffa was later tried for Obstruction of Justice.

ISSUE: Whether the presence of a government informant in Hoffa's hotel room was a search?

HELD: No. The presence of a government informant in Hoffa's hotel room was not a search.

DISCUSSION: The defendant has no reasonable expectation that his conversation will not be reported to a government agent. Where the informer was in the suite by invitation, and every conversation which he heard was either directed to him or knowingly carried on in his presence, the defendant assumes the risk that the person will maintain confidentiality. The Fourth Amendment does not protect a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it.

Olmstead v. United States
277 U.S. 438, 48 S.Ct. 564 (1928)

FACTS: The defendant was convicted of conspiracy to violate the National Prohibition Act. The information which led to the discovery and investigation of the conspiracy was largely obtained by intercepting messages on the telephones of the conspirators by Federal Prohibition Agents. Small wires were inserted along the ordinary telephone wires from the residences of the defendants and those leading from the chief office. The insertions were made without trespass upon any property of the defendants.

ISSUE: Whether the evidence was obtained by means of an unlawful search?

HELD: No. At the time this case was decided, the Fourth Amendment was not triggered unless the government intruded on the defendant's property.

DISCUSSION: The Supreme Court based its pre-*Katz* definition of search on property law. Tapping of wires leading from defendant's residences to the chief office did not constitute "unlawful search and seizure" rendering the evidence inadmissible because there was no physical trespass onto the subject's property. There was no search. The evidence was obtained by the use of the sense of hearing. There was no entry of the houses or offices of the defendants. This case was overturned by *Katz.*

A. PERSONS

United States v. Hunter
550 F.2d 1066 (6th Cir. 1977)

FACTS: An airport security officer told DEA agents that two male passengers had passed through her security checkpoint with a briefcase filled with currency. The currency had been discovered when the briefcase passed through the x-ray machine and showed as an unidentified large mass. Both passengers were enroute to Los Angeles.

A DEA agent discovered that the two passengers were travelling under the names of "C. Williams" and "E. Allen." The phone number left with the airline was listed to another person, who was on file with the DEA office. The agent contacted the Los Angeles DEA office and requested surveillance on the two men. The Los Angeles office reported that the two men drove from the airport to the home of a "documented" narcotics trafficker and then to the home of a large scale narcotics dealer. The agent then contacted the local police department and learned that "C. Williams" had been previously arrested twice for violations of narcotics law. The agent then made plans to meet the two men on their return flight.

The agent awaited the arrival of the two men. However, only one of the men arrived with a

female companion. The agent approached the two individuals and asked them for identification. They both produced drivers' licenses which identified them as Ezell Allen and Sherly Lynn Hunter. The agent then asked for their airline tickets. Allen produced two coupons in the names of "C. Williams" and "J. Hill." The agent then asked the two to accompany him to the airline baggage claim office and placed them under arrest. A search of the two revealed 280 grams of heroin sewn into defendant Hunter's girdle. Nothing was found on defendant Allen.

ISSUE: Whether the agent had probable cause to arrest and search the defendant?

HELD: No. The agent did not have probable cause to arrest and search the defendant.

DISCUSSION: The agent only knew that defendant Hunter was in the company of defendant Allen and that Allen had flight coupons that were in the names of persons suspected of narcotics violations. The agent only had reasonable suspicion to conduct an investigatory stop on defendant Hunter. The search was in violation of her Fourth Amendment right to be free from unreasonable search and seizure.

B. PERSONAL NON-TESTIMONIAL EVIDENCE

C. PAPERS AND EFFECTS

United States v. Van Leeuwen
397 U.S. 249, 90 S.Ct. 1029 (1970)

FACTS: At about 1:30 p.m., March 28, 1968, two 12 pound packages, each insured for $10,000, were deposited "airmail registered" at a post office in Mount Vernon, WA, near the Canadian border. The mailer declared that they contained coins. One package was addressed to a post office box in Van Nuys, CA, and the other to a post office box in Nashville, TN. When the postal clerk told a policeman that he was suspicious of the packages, the policeman at once noticed that the return address on the packages was a vacant housing area, and the license plates of the mailer's car were from British Columbia. The policeman called the Canadian police, who called Customs in Seattle. At 3 p.m., Customs learned that one addressee was under investigation in Van Nuys for trafficking in illegal coins. Due to the time differential, Customs was unable to reach Nashville until the morning of March 29th when they were advised that the second address was also being investigated for the same crime. A search warrant was issued at 4 p.m. and executed at 6:30 p.m., March 29th. The packages were opened, inspected, resealed, and promptly sent on their way.

ISSUE: Whether the twenty-nine hour delay in obtaining a search warrant for the packages was unreasonable under the Fourth Amendment?

HELD: No. Under the circumstances of coordination with officials in a distant location and time difference, 29 hours was not reasonable.

DISCUSSION: The nature and weight of a 12-pound "airmail registered" package, the mailer's fictitious return address and Canadian license plates, and the knowledge that the addressee is under investigation for trafficking in illegal coins, constituted probable cause for the issuance of a warrant to search the packages. Twenty-nine hours is not "unreasonable" within the meaning of the Fourth Amendment, where officials in the distant destination could not be reached sooner because of the time differential.

O'Connor v. Ortega
480 U.S. 709, 107 S.Ct. 1492 (1987)

FACTS: The defendant, a physician, was an employee of a state hospital. Hospital officials became concerned about possible improprieties in his conduct, particularly concerning his acquisition of a computer and charges of sexual harassment. While he was on administrative leave pending investigation of these charges, hospital officials, allegedly in order to inventory and secure state property, searched his office. They seized personal items from his desk and file cabinets. These items were later used in administrative proceedings resulting in his discharge. No formal inventory of the property in the office was ever made, and all the other papers in the office were merely placed in boxes for storage. The defendant filed an action under 42 U.S.C. § 1983.

ISSUES: 1. Whether defendant, a public employee, had a reasonable expectation of privacy in his office, desk, and file cabinet at his place of work?

2. Whether a public employer must establish probable cause before searching an employee's reasonable expectation of privacy?

HELD: 1. Yes. Defendant had been the sole occupant of the office for 17 years, dept personal items in his desk and cabinets, and was not in violation of policy in doing so.

2. It depends. When the employer's search is work-related, the search must be reasonable under the circumstances.

DISCUSSION: The Court has recognized that employees may develop a reasonable expectation of privacy in government workplaces. The operational realities of the workplace, however, may make some employees' expectations of privacy unreasonable when an intrusion is by a supervisor rather than a law enforcement officer. Per Justice Scalia, "[c]onstitutional protection against unreasonable searches by the government does not disappear merely because the government has the right to make reasonable intrusions in its capacity as employer."

The Court concluded that the defendant had a reasonable expectation of privacy in his office. Because the record did not reveal the extent to which hospital officials may have had work-related reasons to enter his office, the case was remanded for further determination.

Regardless of any legitimate right of access the hospital staff may have had to the office, the defendant had a reasonable expectation of privacy in his desk and file cabinets. He did not share his desk or file cabinets with any other employees.

A determination of the standard of reasonableness applicable to a search requires "balancing the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." In the case of searches conducted by a public employer, the court must balance the invasion of the employees' legitimate expectations of privacy against the government's need for supervision, control and the efficient operation of the workplace.

To ensure the efficient and proper operation of the agency, public employers must be given wide latitude to enter employee offices for work-related, non-investigatory reasons, as well as work-related employee misconduct. The Court held that public employer intrusions on the constitutionally protected

privacy interests of government employees for non-investigatory, work-related purposes, as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all the circumstances.

New Jersey v. T.L.O.
469 U.S. 325, 105 S.Ct. 733 (1985)

FACTS: The defendant, a fourteen-year old student, was found smoking cigarettes in a public high school bathroom. She was taken to the vice-principal's office. He asked the defendant to come into his private office and demanded to see her purse. Opening the purse, he found a pack of cigarettes. As he reached into the purse for the cigarettes, the vice-principal also noticed a package of cigarette rolling papers. Suspecting that a closer examination of the purse might yield further evidence of drug use, the vice-principal proceeded to search the purse thoroughly. He found a small amount of marijuana, a pipe, a number of empty plastic bags, a substantial quantity of money in one dollar bills, an index card that appeared to be a list of students who owed the defendant money, and two letters that implicated the defendant in marijuana dealing.

ISSUE: Whether the intrusion of the defendant's purse by the high school administrator was a Fourth Amendment search?

HELD: Yes. The intrusion of the defendant's purse by the high school administrator was a Fourth Amendment search.

DISCUSSION: Ordinarily, a search, even one that may permissibly be carried out without a warrant, must be based on probable cause to believe that a violation of the law has occurred. But the fundamental command of the Fourth Amendment is that searches and seizures be reasonable. Under ordinary circumstances, a search of a student by a teacher or other public school official will be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

United States v. Chadwick
433 U.S. 1, 97 S.Ct. 2476 (1977)

FACTS: Railroad officials in San Diego observed Machado and Leary load a brown footlocker onto a train bound for Boston. Their suspicions were aroused when they noticed that the trunk was unusually heavy for its size, and that it was leaking talcum powder, a substance often used to mask the odor of marijuana or hashish. Machado fit a drug-courier profile. The railroad officials notified DEA in San Diego who in turn notified DEA in Boston.

In Boston, DEA agents did not have a search warrant nor an arrest warrant, but they did have a drug dog. The agents observed Machado and Leary as they claimed their baggage and the footlocker. The agents released the drug dog near the footlocker and he alerted. Chadwick joined Machado and Leary and together they lifted the 200-pound footlocker into the trunk of a car. At that point, at approximately 9:00 p.m., while the trunk of the car was open and before the car engine had been started, the officers arrested all

three. A search incident to the arrests produced the keys to the footlocker. All three were taken to the Federal Building in Boston. The agents followed with Chadwick's car and the footlocker. At all times, the footlocker remained in the possession and control of the agents. At approximately 10:30 p.m., the agents opened the footlocker. It contained large amounts of marijuana. The agents did not have consent of defendants to search, nor did they have a search warrant.

ISSUES: Whether the defendant can expect privacy in his trunk?

HELD: Yes. The defendant's actions indicated he wanted to preserve his privacy in the trunk.

DISCUSSION: By placing personal effects inside a double-locked footlocker, defendants manifested an expectation of privacy in the footlocker. There being no exigency, it was unreasonable for the Government to conduct a search of the footlocker without a search warrant, even where the agents lawfully seized the footlocker at the time of the arrest of its owners and there was probable cause to believe that it contained contraband.

Since the defendants' principle privacy interest in the locked footlocker was not in the container itself, but in its contents, seizure of the locker did not diminish their legitimate expectation that its contents would remain private. However, searching the luggage incident to the arrest cannot be justified as the search was remote in time and place from the arrest.

D. HOUSES (PREMISES)

Payton v New York
445 U.S. 573, 100 S.Ct. 1371 (1980)

FACTS: After an intensive investigation, detectives developed probable cause that the defendant had murdered the manager of a gas station two days earlier. Six officers went to his apartment intending to arrest him. They had not obtained a warrant. Although light and music emanated from the apartment, there was no response to their knock on the metal door. They summoned emergency assistance and, about thirty minutes later, used crowbars to break open the door and enter the apartment. No one was there. In plain view, however, was a .30 caliber shell casing that was seized and later admitted into evidence at the defendant's murder trial.

ISSUE: Whether the warrantless entry into the apartment was lawful?

HELD: No. The physical entry into the home is the chief evil against which the wording of the Fourth Amendment is directed.

DISCUSSION: To be arrested in the home involves not only the invasion attendant to all arrests, but also an invasion of the sanctity of the home. The law has long held that this is too substantial an invasion to allow without a warrant, in the absence of exigent circumstances.

This applies equally to seizures of property. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant. It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. Such a search is unreasonable unless it falls within one of the carefully designed set of exceptions based on "exigent circumstances."

Steagald v. United States
451 U.S. 204, 101 S.Ct. 1642 (1981)

FACTS: A DEA agent in Detroit was contacted by a confidential informant who suggested that he might be able to locate Ricky Lyons, a federal fugitive. The informant gave the agent a telephone number in the Atlanta area where, according to the informant, Lyons could be reached during the next twenty-four hours. The information was relayed to DEA in Atlanta. The telephone company provided the address corresponding to the telephone number. The house belonged to the defendant.

Two days later, DEA agents went to the address to execute the arrest warrant. They observed two men, Gaultney and the defendant, standing in front of the house. The agents frisked and identified the two men. Several agents proceeded to the house. Gaultney's wife answered the door. She was detained while one agent searched the house for Lyons. Lyons was not found, but during the search of the house the agent observed what he believed to be cocaine. An agent was sent to secure a search warrant and in the meantime, a second search was conducted and incriminating evidence was discovered. During the third search of the house which was conducted pursuant to the search warrant, forty-three pounds of cocaine were found.

ISSUE: Whether the evidence from all three searches was illegally obtained because the agents failed to obtain a search warrant before entering the house?

HELD: Yes. The evidence from all three searches was illegally obtained because the agents failed to obtain a search warrant before entering the house.

DISCUSSION: The Fourth Amendment has drawn a firm line at the entrance to a dwelling, and, absent exigent circumstances or consent, that threshold may not be crossed without a warrant. The purpose of a warrant is to allow a neutral and detached magistrate to assess whether the government has probable cause to make an arrest or conduct a search.

An arrest warrant authorizing police to deprive a person of his liberty necessarily also authorizes a limited invasion of that person's privacy when it is necessary to arrest him in his home. However, the arrest warrant does not authorize the police to deprive a third person of his liberty, nor can it embody any derivative authority to deprive that person of his interest in the privacy of his home. Absent exigent circumstances or consent, law enforcement officers can not legally search for the subject of an arrest warrant in the home of a third party without first obtaining a search warrant.

New York v. Harris
495 U.S. 14, 110 S.Ct. 1640 (1990)

FACTS: Police officers, having probable cause but not a warrant, that Harris had committed murder, went to his apartment to arrest him. When they arrived, they knocked on the door, and displayed their guns and badges. The defendant let them enter. He was read his *Miranda* rights and agreed to answer questions. The defendant admitted guilt, was arrested, taken to the station house, and was again informed of his *Miranda* rights. He then signed a written inculpatory statement.

ISSUE: Whether the defendant’s second statement should have been suppressed because of the illegal entry

into the defendant's home?

HELD: No. The defendant's second statement should not have been suppressible because of the illegal entry into the defendant's home.

DISCUSSION: When the police have probable cause to arrest, the exclusionary rule will not bar the government's use of a statement made by the defendant outside of his home, even though the statement was taken after an arrest in the home in violation of *Payton*. The rule in *Payton* was designed to protect the physical integrity of the home, not to grant criminal suspects protection for statements made outside their premises where the police have probable cause to make an arrest.

Here, the police had justification to question the defendant prior to his arrest. Therefore, his subsequent statement was not an exploitation of the illegal entry into his home. Suppressing that statement would not serve the purpose of the *Payton* rule, since anything incriminating gathered from the defendant's in-home arrest has already been excluded.

There can be no valid claim that the defendant was immune from prosecution because his person was the fruit of an illegal arrest. Nor is there any claim that the warrantless arrest required the police to release the defendant. Because the police had probable cause to arrest the defendant for a crime, the defendant was not unlawfully in custody when he was removed to the station house. The Court noted that any evidence found while illegally in the defendant's house would have been suppressed as fruits of the illegal entry. The defendant's statement taken at the police station was not the product of being in unlawful custody.

E. CURTILAGE AND OPEN FIELDS

Hester v. United States
265 U.S. 57, 44 S.Ct. 445 (1924)

FACTS: ATF agents, hiding fifty to one hundred yards from defendant's house, saw a car drive on to the property. They observed the defendant sell moonshine to the driver.

ISSUE: Whether the Fourth Amendment protection of privacy in persons, houses, papers, and effects extends to "open fields?"

HELD: No. The Fourth Amendment protection does not extend to "open fields."

DISCUSSION: The concept of "open fields" is very old. The Court said, "It is obvious that, even if there had been a trespass, the above testimony was not obtained by an illegal search or seizure. The defendant's own acts, and those of his associates, disclosed the jug, the jar, and the bottle; and there was no seizure in the sense of the law when the officers examined the contents of each after they had been abandoned. This evidence was obtained as a result of an entry to the house... the special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers, and effects' is not extended to the "open fields." There is no intrusion onto reasonable expectation of privacy when government agents enter onto open fields. Therefore, there is no Fourth Amendment search.

Oliver v. United States
466 U.S. 170, 104 S.Ct. 1735 (1984)

FACTS: Narcotic agents, acting on a report that marijuana was being grown on the defendant's farm, went to the farm to investigate. They drove past the defendant's house to a locked gate with a "no trespassing" sign, but with a footpath around the gate on one side. The agents walked around the gate and along the footpath and found a field of marijuana over a mile from the defendant's house.

ISSUE: Whether the officers' observations were made in the open fields?

HELD: Yes. The officers' observations were made in the open fields.

DISCUSSION: Steps taken to protect privacy, such as planting the marijuana on secluded land and erecting fences and "No Trespassing" signs around the property, do not necessarily establish an expectation of privacy in an open field. Open fields do not provide the setting for those intimate activities that the Fourth Amendment is intended to shelter from government intrusion or surveillance.

United States v. Dunn
480 U.S. 294, 107 S.Ct. 1134 (1987)

FACTS: DEA agents discovered that Carpender had bought large quantities of chemicals and equipment used to make controlled substances. The agents placed beepers in some of this equipment and followed it to the defendant's ranch.

The ranch was completely encircled by a perimeter fence, and contained several interior barbed wire fences, including one around the house approximately fifty yards from the barn, and a wooden, corral fence enclosing the front of the barn. The barn had an open overhang and locked, waist high gates.

Agents, without a warrant, climbed over the perimeter fence, several of the barbed wire fences, and the wooden fence in front of the barn. They were led there by the smell of chemicals, and while there, could hear a motor running inside. They shined a flashlight inside and observed a drug lab. Using this information, the agents obtained and executed a search warrant.

ISSUE: Whether the officers' observations were made in the open field?

HELD: Yes. The officers' observations were made in the open field.

DISCUSSION: The Court held that it will <u>consider</u> four factors in determining if an area is in the open field or curtilage:

1. proximity of the area to the home;

2. whether the area is within an enclosure that also surrounds the home;

3. nature and use to which the area is put; and,

4. steps taken by the resident to protect the area from observation by passers-by.

The Court held that the defendant did not establish the area surrounding his barn as curtilage. Therefore, the officers' intrusion into this area was not a search. Also, the warrantless naked-eye observation of an area of reasonable expectation of privacy is not a search; nor is the shining of a flashlight into an area of reasonable expectation of privacy

F. SURVEILLANCE V. PRIVACY

California v. Ciraolo
476 U.S. 207, 106 S.Ct. 1809 (1986)

FACTS: Police received an anonymous telephone tip that marijuana was growing in defendant's backyard. This area was enclosed by two fences, six and ten feet in height, and shielded from view at ground level. Officers who were trained in marijuana identification secured a private airplane, flew over defendant's home at an altitude of 1,000 feet, and readily identified marijuana plants growing in his yard. A search warrant was issued based on this information.

ISSUE: Whether the naked-eye aerial observation of defendant's backyard constituted an illegal search?

HELD: No. Areas within curtilage may be observed from public areas.

DISCUSSION: The Fourth Amendment protection of the home and curtilage does not require law enforcement officers to shield their eyes when passing by a home on a public thoroughfare. While the fences were designed to conceal the plants at normal street level, they will not shield the plants from the eyes of a citizen or a policeman perched on the top of a truck or a two-level bus. The public airways may be used by the government as well as members of the public.

Dow Chemical Co. v. United States
476 U.S. 227, 106 S.Ct. 1819 (1986)

FACTS: The defendant operated a 2,000 acre chemical plant. The plant consisted of numerous covered buildings, with outdoor manufacturing equipment and piping conduits located between the buildings which were exposed to visual observation from the air. The defendant maintained an elaborate security system around the perimeter of the complex, barring ground-level public views of the area. When the defendant denied a request by the EPA for an on-site inspection of the plant, the EPA employed a commercial aerial photographer, using a standard precision aerial mapping camera, to take photographs of the facility from various altitudes, all of which were within lawful navigable airspace.

ISSUE: Whether this conduct was a Fourth Amendment search?

HELD: No. The government may use air space just as other members of the public.

DISCUSSION: The use of aerial observation and photography is within the EPA's statutory authority. When Congress invests an agency with enforcement and investigatory authority, it is not necessary to identify explicitly every technique that may be used in the course of executing the statutory mission. Although §114(a) of the Clean Air Act, which provides for the EPA's right of entry for inspection purposes, it does not

authorize aerial observation. This section, however, appears to expand, not restrict, the EPA's general investigatory powers.

The EPA's aerial photograph of the defendant's plant complex from aircraft lawfully in public navigable airspace was not a search. The open areas of an industrial plant complex are not analogous to the "curtilage" of a dwelling. The intimate activity associated with family privacy, the home and its curtilage do not include the outdoor areas between structures and buildings of a manufacturing plant. The open areas of an industrial complex are more comparable to an "open field" in which an individual may not legitimately demand privacy. *Oliver v. United States*, 466 U.S. 170, 104 S.Ct. 1735 (1984).

Florida v. Riley
488 U.S. 445, 109 S.Ct. 693 (1989)

FACTS: A Sheriff's Office got an anonymous tip that the defendant was growing marijuana on his property. He lived in a mobile home on five acres of rural property. A deputy saw a greenhouse behind the mobile home, but could not see inside. His view was blocked by walls, trees and the mobile home. He could see part of the roof was missing. A fence surrounded the mobile home and greenhouse. The officer flew over the curtilage at 400 feet in a helicopter and with his naked eye saw marijuana inside the greenhouse. A search warrant was obtained and executed, resulting in the discovery of marijuana.

ISSUE: Whether naked eye observations on a curtilage from 400 feet in a helicopter constitute a search?

HELD: No. The government may use air space consistent with public use.

DISCUSSION: The Supreme Court had previously approved flying a fixed wing aircraft at 1,000 feet over curtilage. The aircraft was in public airspace and complied with FAA regulations. Therefore, no reasonable expectation of privacy existed. The Court also approved flying over an industrial complex and taking photographs. *Dow Chemical Co. v. United States*, 476 U.S. 226, 106 S.Ct. 1819 (1986). The Court held that there was no reasonable expectation of privacy on outside areas - - i.e., no industrial curtilage.

In this case, the defendant had no reasonable expectation of privacy from the helicopter overflight. FAA regulations allow a helicopter to fly lower than fixed wing aircraft if its operation is conducted without hazard to persons or property on the ground.

United States v. Karo
468 U.S. 705, 104 S.Ct. 3296 (1984)

FACTS: The DEA learned through an informant that the defendant had ordered fifty gallons of ether to be used to extract cocaine from clothing that had been imported into the United States. The government obtained a court order authorizing the installation and monitoring of a beeper in one of the cans of ether. With the informant's consent, the DEA substituted their own can containing a beeper for one of the cans in the shipment.

The agents saw the defendant pick up the ether from the informant, followed him to his home, and determined by using the beeper that the ether was inside the house. The ether was moved to two other houses, including Horton's, then to a commercial storage facility where it was stored in a locker.

Finally, the ether was transported to a house rented by Horton, Harley and Steele. Using the beeper, agents determined that the can was inside the house, and obtained a search warrant for the house, based in part on information derived through the use of the beeper. The search warrant was executed and cocaine was seized.

ISSUES: 1. Whether the installation of the beeper was lawful?

2. Whether the monitoring of the beeper inside the residences was a search?

HELD: 1. Yes. 2. Yes.

DISCUSSION: No Fourth Amendment right was infringed by the installation of the beeper. The consent of the informant to install the beeper was sufficient. The transfer of the beeper-laden can to the defendant was neither a search nor a seizure, since it conveyed no information that he wished to keep private, and did not interfere with anyone's possessory interest in a meaningful way.

The monitoring of the beeper in a private residence, an area of reasonable expectation of privacy, is a search. As this search was conducted without a warrant, it violated the Fourth Amendment. The government, by the surreptitious use of a beeper, obtained information that it could not have obtained from outside the curtilage of the house.

However, the officers, by surveillance and other investigation, had sufficient facts to constitute probable cause. They could not, however, use information derived from the beeper while it was located inside the residence. The evidence seized from the house was not suppressed.

Unites States v. Knotts
460 U.S. 276, 103 S.Ct. 1081 (1983)

FACTS: Armstrong was suspected to buying chemicals for the production of controlled substances. With the consent of the Hawkins Chemical Company, police officers installed a beeper in a five-gallon can of chloroform, which is often used to manufacture drugs. Hawkins agreed to use this can the next time Armstrong purchased chloroform. When Armstrong made his purchase, the officers followed the beeper signal to its final destination, underneath the defendant's cabin. Relying on this information, the officers obtained a search warrant. They discovered the defendant's fully operational drug laboratory in the cabin.

ISSUE: Whether the monitoring of the beeper on public roadways or at its final destination amounted to a search?

HELD: No. The monitoring of the beeper on public roadways and at its final destination did not amount to a search.

DISCUSSION: Governmental activity does not amount to a search unless it intrudes into a reasonable expectation of privacy. The Court held that a person traveling on a public roadway has no reasonable expectation that other members of the public or law enforcement officers will not observe their movements. As the officers could have used visual surveillance techniques to obtain the information provided by the beeper, they did not intrude on the defendant's reasonable expectation of privacy.

Also, the monitoring of the beeper while on the defendant's property did not amount to an

intrusion of the defendant's reasonable expectation of privacy either. The Court reasoned that members of the public could have visually observed the can that contained the beeper in the transfer from the public domain to private property, the defendant had no reasonable expectation in its final destination. However, if the beeper had been used to reveal information about the movement of the can while inside the cabin, which is not observable from a public place, this would have amounted to an intrusion into a reasonable expectation of privacy.

United States v. Taborda
635 F.2d 381 (9th Cir. 1980)

FACTS: DEA agents conducted surveillance of the defendant's apartment from an apartment directly across the street. The agents observed various drug paraphernalia. The surveillance was occasionally conducted by means of a high-powered telescope. A search warrant, was issued based on all these observations. A detective testified that he made most of the observations without the aid of the telescope. However, the detective also testified that he used the telescope to help him count small dark objects from which white powder was being removed, as well as to allow him to read the legends on containers. The court suppressed the evidence seized from the apartment pursuant to the search warrant because the affidavit underlying the search warrant did not state which, if any, of the observations were made with unaided eyes.

ISSUE: Whether the government surveillance of a person in his home by means of a telescope is a search?

HELD: The answer depends on whether such surveillance violated a reasonable expectation of privacy. Unenhanced visual observations by DEA agents from across the street were not searches within the Fourth Amendment. To the extent that agents used a telescope to identify objects or activities that could not be identified without it, those observations were searches.

DISCUSSION: A person's home is a place where privacy is expected. The very fact that a person is in their home raises a reasonable inference that he intends to have privacy. But the inference may be rebutted by the person's actions. If he conducts activities or places objects in such a way that the activities or objects are seen by the unenhanced viewing of persons outside the home, he may make no claim of a legitimate expectation of privacy. However, any enhanced viewing of the interior of a home intrudes upon a legitimate expectation of privacy unless circumstances create a traditional exception to that requirement.

In this case, if the distance between the two apartments permitted unenhanced visual observations, such observations would not be searches within the meaning of the Fourth Amendment. However, to the extent that the agents used a telescope to identify objects or activities that were not identified without an instrument, those observations were searches and could not form the basis of a warrant application.

United States v. Whaley
779 F.2d 585 (11th Cir. 1986)

FACTS: The defendant and his coconspirators manufactured cocaine directly in front of uncurtained windows in the lighted basement of his home. The activity was viewed by DEA agents from a neighboring property. Although the activity could be seen with the naked eye, the agents frequently used binoculars to aid their observation.

ISSUE: Whether the defendant had a reasonable expectation that any activity in his basement would be private?

HELD: No. There is no reasonable expectation of privacy as to the defendant's basement where the defendant and his coconspirators engaged in the manufacturing of cocaine in a lighted basement directly in front of uncurtained windows which could be viewed with the naked eye.

DISCUSSION: Although the defendant might have believed that the activity in his basement would not be observed, a reasonable expectation of privacy by definition means more than a subjective expectation of not being discovered. The defendant could not have reasonably expected the activity in his basement to be private as long as his uncovered windows were observable from places outside his curtilage. He conducted his activities in open view and consequently cannot contest the DEA's use of the information. Moreover, with a few minor exceptions, all of the observations made by the agents could have been made with the naked eye. Such observations do not violate the Fourth Amendment and were properly considered in determining probable cause to issue the warrant.

G. ABANDONMENT

California v. Greenwood
486 U.S. 35, 108 S.Ct. 1625 (1988)

FACTS: The police had information indicating that the defendant might be engaged in narcotics trafficking. They obtained from his regular trash collector garbage bags left on the curb in front of his house. Based on evidence found in the garbage, police obtained a search warrant. The search yielded quantities of cocaine and hashish. The defendant and others were arrested and released on bail. The police again received information that the defendant continued to engage in narcotics trafficking. Again the police obtained his garbage from the regular trash collector. A second warrant was executed. The police found more narcotics and evidence of narcotics trafficking. The defendant was again arrested.

ISSUE: Whether the defendant has a reasonable expectation of privacy in garbage left for collection outside the curtilage of his home?

HELD: No. The defendant does not have a reasonable expectation of privacy in garbage left for collection outside the curtilage of his home.

DISCUSSION: The defendant may establish a reasonable expectation of privacy in garbage bags left at the curb outside his curtilage only if he manifested a subjective expectation of privacy that society accepts as objectively reasonable.

That the defendant exposed his garbage to the public, sufficiently defeats his claim to Fourth Amendment protection. It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public. Moreover, the defendant placed his refuse at the curb for the express purpose of conveying it to a third party, the trash collector. The trash collector might have sorted through the trash or permitted others, such the police, to do so. Accordingly, the defendant has no reasonable expectation of privacy in the items discarded. What a person knowingly exposes to the public, even in his own home or office, is not subject to Fourth Amendment protection.

California v. Hodari
499 U.S. 621, 111 S.Ct. 1547 (1991)

FACTS: Two officers were on patrol in a high-crime area. They came upon a group of youths huddled around a car. The youths, including the defendant, fled at the approach of the unmarked police car. A police officer, wearing a "raid" jacket, left the patrol car to give chase. The officer took a circuitous route that brought him face to face with the defendant. The defendant was looking behind as he ran and did not turn to see the officer until the officer was almost upon him, whereupon the defendant tossed away a small rock. The officer tackled him, handcuffed him, and radioed for assistance. The police recovered the rock, which proved to be crack cocaine.

ISSUE: Whether the defendant was "seized" at the time he dropped the controlled substance?

HELD: No. The defendant was not seized at the time he dropped the controlled substance.

DISCUSSION: The defendant was not seized at the time he dropped the drugs. No physical force was applied to the defendant, nor did he submit to a "show of authority." He was not seized until he was tackled. To constitute a Fourth Amendment seizure of a person, there must be either:

1. The application of force however slight; or

2. Submission to an officer's "show of authority" to restrain the subject's freedom of movement.

Assuming that the officer's pursuit constituted a "show of authority" requesting the defendant to halt, the defendant did not submit. He therefore was not seized until he was tackled. Thus, the cocaine was abandoned while he was running and was not the fruit of a seizure.

United States v. Kramer
711 F.2d 789 (2nd Cir. 1983)

FACTS: The defendant was indicted for drug trafficking and tax evasion. Among the evidence received at trial were records of marijuana sales by the defendant. The records were found among garbage put by the roadside in front of his house to be collected by a private garbage removal service. The garbage was in plastic trash bags inside plastic garbage containers with plastic tops. Local police investigators trespassed a few feet onto the outer edge of the defendant's front yard and picked up the trash bags, without first obtaining a warrant. The investigators transported the bags to the police station where they searched through the their contents.

ISSUE: Whether a warrantless search of a person's garbage put outside of their home for collection, violates any interest protected by the Fourth Amendment?

HELD: No. The warrantless search of a persons garbage placed outside the home for collection does not violate Fourth Amendment.

DISCUSSION: The Fourth Amendment protection of reasonable expectations of privacy does not extend to a person's discarded garbage. While people may not want others to see things that they throw away, such as financial records or bills, they can easily prevent others from viewing these items by destroying them prior to discarding them or by not discarding them at all.

The defendant in this case argued that the police trespassed on his land to reach the trash bags. However, the defendant's expectation regarding his garbage and his expectation regarding his land are distinct. The trespass by the police was not a threat to the peace and quiet of the respondent's house; it did not interfere with his enjoyment of his front yard since the police emptied the contents of the trash bags at the station rather than directly onto his lawn; nor did it interfere with the weekly routine the defendant followed to dispose of his garbage since the police unobtrusively picked up the trash bags on the same day that his regular garbage collector would have.

The defendant does have a possessory interest in his land and in preventing others from using it. However, the Fourth Amendment does not protect possessory interests in land. While every trespass, by definition, invades someone's right of possession, not every government trespass violates the Fourth Amendment. Only those trespasses that infringe on a privacy interest trigger the Fourth Amendment.

Preventing others from using one's land under the circumstances in this case, however, does not amount to a privacy interest.

Pembaur v. Cincinnati
475 U.S. 469, 106 S.Ct. 1292 (1986)

FACTS: The defendant, a physician and proprietor of a clinic, provided medical services to welfare recipients. He was indicted by a grand jury for fraudulently accepting payments from state welfare agencies. During the grand jury investigation, subpoenas were issued for two of his employees. When the employees failed to appear, arrest warrants were issued for their arrest. When two Deputy Sheriffs attempted to serve the warrants at the defendant's clinic, he barred the door and refused to let them enter the private part of the clinic. Police officers, whom the defendant had called, appeared and told him to allow the Deputy Sheriffs to enter. The defendant continued to refuse. The Deputy Sheriffs then called the County Prosecutor, who instructed the Deputy Sheriffs to "go in and get" the employees. The door was chopped down with an axe. The Deputy Sheriffs entered and were unable to find the two employees.

Although the defendant was acquitted of the fraud charges, he was prosecuted and convicted for obstruction of justice. He then filed a 42 U.S.C. § 1983 lawsuit against the County and other defendants alleging that his Fourth and Fourteenth Amendment rights had been violated. His theory was that, absent exigent circumstances, the Fourth Amendment prohibited police from searching an individual's home or business without a search warrant even to execute an arrest warrant for a third person.

ISSUE: Whether law enforcement officers have to obtain a search warrant to execute an arrest warrant in areas in which a third party has reasonable expectation of privacy?

HELD: Yes. Generally, officers must obtain a search warrant to execute an arrest warrant in areas where a third party has reasonable expectation of privacy.

DISCUSSION: Absent some exigency, law enforcement officers must have a search warrant to enter a third party zone of reasonable expectation of privacy to serve an arrest warrant. In ordering Deputy Sheriffs to enter the defendant's clinic to serve arrest warrants on third persons, the county prosecutor was acting as the final decision maker for the county. Therefore, the county could be held liable under 42 U.S.C. § 1983 for a violation of the defendant's Fourth Amendment rights.

IV. SEARCH WITH A SEARCH WARRANT

A. AUTHORITY TO ISSUE

Connelly v. Georgia
429 U.S. 245, 97 S.Ct. 546 (1977)

FACTS: The defendant was convicted for possession of marihuana. The search warrant used to search his house was issued by a Georgia Justice of the Peace. In the appeal of his case, the defendant questioned the constitutional impropriety of the system governing the issuance of search warrants by justices of the peace in Georgia, who are granted fees for the issuance of warrants.

ISSUE: Whether the pecuniary interests of an issuing magistrate violates the defendant's protection afforded

him by the Fourth and Fourteenth Amendments?

HELD: Yes. Issuing magistrates must be neutral and detached.

DISCUSSION: The justice who issued the warrant was not a “neutral and detached magistrate” because he had a pecuniary interest in issuing the warrant. Georgia Justices of the Peace are not salaried. Their compensation is solely based upon how many warrants they issue within a year. Their pecuniary interest in issuing search warrants destroys their neutrality.

Lo-Ji Sales, Inc. v. New York
442 U.S. 319, 99 S.Ct. 2319 (1979)

FACTS: A police investigator purchased two reels of film from defendant's "adult" bookstore. Upon viewing them, he concluded that they violated local obscenity law. He took them to a town justice who viewed both films in their entirety. The justice concluded the films were obscene.

The investigator applied for a search warrant and requested that the town justice accompany him to the defendant's store for its execution. This would allow the town justice to independently see if any other items at the store were possessed in violation of the law. At the time the town justice signed the warrant, the only "things to be seized" that were described in the warrant were copies of the two films the state investigator had purchased.

The town justice went along for the execution of the search warrant. He viewed movies, and determined which were subject to seizure. He had magazines removed from clear plastic or cellophane wrappings, reviewed them, and determined them to be subject to seizure.

ISSUE: Whether the magistrate was neutral and detached?

HELD: No. The magistrate was not neutral and detached.

DISCUSSION: By allowing himself to become a member of the search party, the town justice did not manifest the neutrality and detachment demanded of a judicial officer when presented with an application for a search warrant. The fact that the store invited the public to enter did not constitute consent to a wholesale search and seizure. The town justice viewed the films and magazines in a manner inconsistant with that of a customer. He did not see these items as a customer would ordinarily see them. Therefore, his involvement in the search led to the proper exclusion of that evidence discovered.

B. PROPERTY AND PERSONS SUBJECT TO SEIZURE WITH A WARRANT

Warden v. Hayden
387 U.S. 294, 87 S.Ct. 1642 (1967)

FACTS: A man robbed the office of a cab company and ran. Two cab drivers, attracted by the shouts of "holdup," followed the man to a residence. One driver notified the company dispatcher by radio, giving a description of the man and the address he entered. The dispatcher relayed the information to the police who arrived at the scene within five minutes. The officers entered the house without a warrant, and spread out through the first and second floors and the cellar in search of the robber. The defendant was

found in an upstairs bedroom feigning sleep. He was arrested.

Meanwhile, an officer was attracted to an adjoining bathroom by the noise of running water, and discovered a shotgun and a pistol in a flush tank. Another officer who "was searching the cellar for a man or the money" (and the Court said it should be noted that he was also looking for weapons), found a jacket and trousers of the type the fleeing man was said to have worn in a washing machine. A clip of ammunition for the pistol and a cap were found under the mattress of the defendant's bed. Ammunition for the shotgun was found in a bureau drawer in the defendant's room. At the time these searches were made, the officers did not know that the defendant had been arrested. All these items of evidence were introduced against the defendant at his trial.

ISSUES: 1. Whether the entry into the house, without a warrant, and the search for the robber and for weapons was legal?

2. Whether the seizure of the items of clothing ("mere evidence") was legal?

HELD: 1. Yes. 2. Yes.

DISCUSSION: The officers acted reasonably when they entered the house and began to search for a man and for weapons which might be used against them. Neither the entry without a warrant to search for the robber, nor the search for him was invalid as there were exigent circumstances. The officers acted reasonably when they entered the house and began to "search for the **man**... **and for weapons** which he had used in the robbery and might use against them" (emphasis added). "Speed here was essential, and only a thorough search of the house for **persons and weapons** could have insured that Hayden was the only man present; and that the police had control of all weapons which could be used against them or to effect an escape" (emphasis added). "The permissible scope of search must, therefore, at the least, be as broad as may reasonably be necessary to prevent the dangers that the suspect at large in the house may resist or escape."

The language of the Fourth Amendment does not support a distinction between "mere evidence" and instrumentalities, fruits of crime, or contraband. The clothes were found in the course of a reasonable search for weapons, under the plain view doctrine.

Andresen v. Maryland
427 U.S. 463, 96 S.Ct. 2737 (1976)

FACTS: A fraud unit began an investigation of real estate settlement activities in the Washington, D. C. area. At the time, the defendant was an attorney who, as a sole practitioner, specialized in real estate settlements in Montgomery County. During the fraud unit's investigation, his activities came under scrutiny, particularly in connection with a transaction involving Lot 13T in the Potomac Woods subdivision of Montgomery County. An extensive investigation disclosed that the defendant, acting as settlement attorney, had defrauded Standard-Young Associates, the purchaser of Lot 13T. When Standard-Young confronted the defendant with this information, he responded by issuing, as an agent of a title insurance company, a title policy guaranteeing clear title to the property.

The investigators concluded that there was probable cause to believe that the defendant had committed the state crime of false pretenses. They applied for warrants to search the defendant's office and the separate office of Mount Vernon Development Corporation, of which the defendant was incorporator,

sole shareholder, resident agent and director. The application sought permission to search for specified documents pertaining to the sale and conveyance of Lot 13T. The warrant was issued.

ISSUE: Whether the warrant was specific enough to meet the "particularity" clause of the Fourth Amendment?

HELD: Yes. The warrant was specific enough to meet the “particularity” clause of the Fourth Amendment.

DISCUSSION: All items in a set of "files" may be inspected during a search, provided that a description for identifying the evidence sought is listed in the search warrant - - and followed by the investigators. “We recognize that there are grave dangers inherent in executing a warrant authorizing a search and seizure of a person's papers that are not necessarily present in executing a warrant to search for physical objects whose relevance is more easily ascertainable.” In searches for papers, it is likely that some innocuous documents will be examined, in order to determine whether they are among those papers authorized to be seized. Similar dangers are present in executing a warrant for the "seizure" of telephone conversations. In both kinds of searches, responsible officials, including judicial officials, must take care to assure that the search is conducted in a manner that minimizes unwarranted intrusions upon privacy.

C. AFFIDAVIT FOR A SEARCH WARRANT

1. DESCRIPTIONS

a. PLACE

Stanford v. Texas
379 U.S. 476, 85 S.Ct. 506 (1965)

FACTS: Several law enforcement officers went to the defendant's home for the purpose of searching it under the authority of a warrant issued by a local magistrate. By the time they were finished, five hours later, they had seized some 2,000 books, pamphlets, and papers.

The magistrate authorized the officers to search the premises as "a place where books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party in Texas are unlawfully possessed . . . and to take possession of same." The officers seized all books including biographies of Pope John XXIII and Justice Black.

ISSUE: Whether the search and seizure amounted to an unconstitutional general search?

HELD: Yes. The warrant did not meet the particularity requirements of the Fourth Amendment.

DISCUSSION: The Fourth Amendment prohibits general warrants that give police roving commissions to search where and to seize what they please. The indiscriminate sweep of its language renders a search warrant invalid under the Fourth Amendment where the warrant authorizes the seizure of "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operation of the Communist Party in Texas."

Maryland v. Garrison
480 U.S. 79, 107 S.Ct. 1013 (1987)

FACTS: Police officers obtained and executed a warrant to search the person of Lawrence McWebb and "the premises known as 2036 Park Avenue third floor apartment." After an exterior examination and an inquiry of the utility company, the officer who obtained the warrant reasonably concluded that there was only one apartment on the third floor and that it was occupied by McWebb. When police officers executed the warrant, they fortuitously encountered McWebb in front of the building and used his key to gain admittance to the first floor hallway and to the locked door at the top of the stairs to the third floor. As they entered the vestibule on the third floor, they encountered the defendant, who was standing in the hallway area. The police could see into the interior of both McWebb's apartment to the left and defendant's to the right. Only after the defendant's apartment had been entered and heroin, cash and drug paraphernalia had been found, did any of the officers realize that the third floor contained two apartments. As soon as they became aware of that fact, the search was discontinued. All of the officers believed that they were searching McWebb's apartment.

ISSUES: Whether the search warrant was unreasonably vague and ambiguous?

HELD: No. The officers' behavior must be reasonable under the circumstances.

DISCUSSION: The Court held that the police officers acted reasonably when: (1) the warrant authorized a search of "the premises known as 2036 Park Avenue third floor apartment," (2) the objective facts available to the officers at the time of the search suggested no distinction between the named person's apartment and the entire third floor premises, (3) the officers discovered that the third floor was in fact divided into two separate apartments--only after they entered, and found contraband in the apartment of the tenant not named in the warrant, and (4) they discontinued the search as soon as they made this discovery. Under these circumstances, the officers' failure to realize the overbreadth of the warrant is objectively understandable and reasonable, and their execution of the warrant was proper whether the warrant is interpreted as authorizing a search of the entire third floor or a search limited to the named person's apartment.

The constitutionality of the officer's conduct must be judged in the light of the information available to them at the time they request the warrant. Sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment.

b. PERSON OR THINGS

Steele v. United States
267 U.S. 498, 45 S.Ct. 414 (1925)

FACTS: An affidavit for search warrant stated: "Isidor Einstein, being duly sworn, deposes and says: I am a general prohibition agent assigned to duty in the State of New York. On December 6, 1922, at about 10 o'clock a.m., accompanied by Agent Moe W. Smith, I was standing in front of the garage located in the building at 611 West 46th Street, borough of Manhattan, City and Southern District of New York. This building is used for business purposes only. I saw a small truck driven into the entrance of the garage and I saw the driver unload from the end of the truck a number of cases of stenciled whiskey. They were the size and appearance of whiskey cases and I believe that they contained whiskey. A search of the records of the Federal prohibition director's office fails to disclose any permit for the manufacture, sale, or possession of

intoxicating liquors at the premises above referred to."

"The building to be searched was a four-story building in New York City on the south side of West 46th Street, with a sign on it Indian Head Auto Truck Service--Indian Head Storage Warehouse, No. 609 and 611. It was all under lease to Steele. The building could be entered by three entrances from the street, one on the 609 side on the 611 side, and in the middle of the building is an automobile entrance from the street into a garage. There is no partition between 611 and 609 on the ground or garage floor, and there were only partitions above and none which prevented access to the elevator on any floor from either the 609 or 611 side."

ISSUE: Whether the search was unconstitutional in that the affidavit and the warrant did not particularly describe the place to be searched or the things to be seized?

HELD: No. The search was not unconstitutional as the affidavit adequately described both the place to be searched and the things to be seized.

DISCUSSION: The Court held that the description of the building indicated the whole building was intended to be searched. The evidence left no doubt that although the building had two numbers, the garage business covering the first floor, and the storage business above were so related to the elevator that there was no real division of the building. The Court considered the fact that the search did not "go too far." The places searched were all rooms connected with the garage by the elevator. A search warrant authorizing the search of a building described as a garage, located on the first floor of that building and rooms used in connection with that garage, will justify the search of storage rooms on the upper floors of the building connected with the garage by an elevator.

3. PROBABLE CAUSE

a. PERSONAL KNOWLEDGE / REASONABLE OFFICER STANDARD

United States v. Ventresca
380 U.S. 102, 85 S.Ct. 741 (1965)

FACTS: An affidavit for a search warrant described seven different occasions between July 28 and August 30, 1961, when a car was driven into the yard to the rear of the defendant's house. On four occasions the car carried loads of sugar in sixty pound bags; twice it made two trips loaded with empty tin cans; and once it was observed as being heavily laden. Garry, the car's owner, and Incardone, a passenger, were seen on several occasions loading the car at the defendant's house and later unloading apparently full five-gallon cans at Garry's house. The affidavit went on to state that at about 4 a.m. on August 18, and at about 4 a.m. August 30, "Investigators" smelled the odor of fermenting mash as they walked along the sidewalk in front of the defendant's house. On August 18 they heard, "at or about the same time, . . . certain metallic noises." On August 30, the day before the warrant was applied for, they heard (as they smelled the mash) "sounds similar to that of a motor or a pump coming from the direction of the defendant's house." The affidavit concluded: "The foregoing information is based upon personal knowledge and information which has been obtained from Investigators of the Alcohol, Tobacco Tax Division, Internal Revenue Service, who have been assigned to this investigation."

ISSUE: Whether failure to indicate which facts alleged were hearsay and which were within the affiant's own knowledge destroys the affidavit's reliability?

HELD: No. The failure to indicate which facts alleged were hearsay and which were within the affiant's own knowledge does not destroy the affidavit's reliability.

DISCUSSION: An affidavit which shows probable cause for the issuance of a search warrant is not invalidated for failure to clearly indicate which of the facts alleged are hearsay and which are within the affiant's own knowledge. However, probable cause cannot be made out by affidavits which are purely conclusionary, stating only the affiant's or an informer's belief that probable cause exists, without detailing any of the underlying circumstances upon which that belief is based. "Affidavits for search warrants . . . must be tested and interpreted by magistrates and courts in a common sense and realistic fashion. . . . A grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting. When a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a common sense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants."

b. HEARSAY AND THE *AGUILAR* TEST

Aguilar v. Texas
378 U.S. 108, 84 S.Ct. 1509 (1964)

FACTS: Two police officers applied for a warrant to search the defendant's home for narcotics. Their affidavit recited that: "Affiants have received reliable information from a credible person and do believe that heroin, marijuana, barbiturates and other narcotics and narcotic paraphernalia are being kept at the above described premises for the purpose of sale and use contrary to the provisions of law." The search warrant was issued and narcotics were found.

ISSUE: Whether the affidavit provided a sufficient basis for a finding of probable cause and issuance of a search warrant?

HELD: No. The affidavit did not provide a sufficient basis for a finding of probable cause and issuance of a search warrant.

DISCUSSION: In passing on the validity of a search warrant, a reviewing court may consider only the information brought to a magistrate's attention. Informed and deliberate determinations of magistrates are to be preferred over hurried actions of officers. Evidence sufficient to support a magistrate's disinterested determination to issue a warrant will not necessarily justify the officer in making a search without a warrant.

The Fourth Amendment does not deny law enforcement the support of usual inferences which reasonable persons may draw from evidence. But it does require such inferences be drawn by a neutral and detached magistrate instead of an officer engaged in often the competitive enterprise of ferreting out crime.

An affidavit for a search warrant may be based on hearsay information and need not reflect direct personal observations of the affiant. But the magistrate must be informed of some of the underlying circumstances on which the informant based his conclusions and some of the underlying circumstances from which an officer concluded that the informant, whose identity need not be disclosed, was "credible" or that his information was reliable. Although the reviewing court will grant substantial deference to judicial

determinations of probable cause, the court must still insist that the magistrate perform his "neutral and detached" function and not serve merely as a “rubber stamp.”

Spinelli v. United States
393 U.S. 410, 89 S.Ct. 584 (1969)

FACTS: The defendant was convicted of interstate travel in aid of racketeering. The FBI had tracked the defendant for five days and had seen him drive from East St. Louis into St. Louis and park in an apartment house lot and enter a particular apartment in that building. The apartment that the defendant was seen entering had two specified telephone lines. This defendant was also known to federal and local authorities as a bookmaker and gambler. A confidential informant stated to agents that the two phone lines were being used for a gambling operation. The informant did not personally observe the defendant at work as a bookmaker, nor did the informant ever place any bets with the defendant. The informant came by his information indirectly, and did not explain why his sources were reliable. FBI agents did not execute their search warrant until the defendant was observed leaving the apartment, locking the door and entering the hallway. At this point, the defendant was arrested, the key was demanded of him, and the apartment was searched.

ISSUE: Whether the FBI agent established probable cause?

HELD: No. The FBI agents did not establish probable cause.

DISCUSSION: The informant’s tip must be measured against *Aguilar’s* standards so that its’ probative value can be assessed. If the tip is found inadequate under *Aguilar*, then the other allegations which corroborate the information contained in the report should be considered.

Agents tracking the defendant for five days from East St. Louis into St. Louis, entering a particular apartment which contained two telephone lines, knowledge that the defendant may be a bookmaker and gambler, and a confidential informant statement that the phone lines were being used for a gambling operation did not furnish probable cause for the issuance of a search warrant.

United States v. Harris
403 U.S. 573, 91 S.Ct. 2075 (1971)

FACTS: A federal tax investigator and a local constable entered the premises of the defendant, pursuant to a search warrant issued by a federal magistrate, and seized jugs of whiskey upon which the federal tax had not been paid. The search warrant was issued solely on the basis of the investigator's affidavit, which recited the following:

“Roosevelt Harris has had a reputation with me for over 4 years as being a trafficker of nontaxpaid distilled spirits, and over this period I have received numerous information {sic} from all types of persons as to his activities. Constable Howard Johnson located a sizeable stash of illicit whiskey in an abandoned house under Harris' control during this period of time. This date, I have received information from a person who fears for their {sic} life and property should their name be revealed. I have interviewed this person, found this person to be a prudent person, and have, under a sworn verbal statement, gained the

following information: This person has personal knowledge of and has purchased illicit whiskey from within the residence described, for a period of more than 2 years, and most recently within the past two weeks, has knowledge of a person who purchased illicit whiskey within the past 2 days from the house, has personal knowledge that the illicit whiskey is consumed by purchasers in the outbuilding known as and utilized the 'dance hall' and has seen Roosevelt Harris go to the other outbuilding, located about 50 yards from the residence, on numerous occasions, to obtain the whiskey for this person and other persons."

ISSUE: Whether information from a partner-in-crime, even though the identity of the informant is confidential, satisfies the credibility prong of the informant portion of *Aguilar-Spinelli* test?

HELD: Yes. Partners-in-crime are presumed credible.

DISCUSSION: The affidavit purports to relate the personal observations of the informant and recites prior events within the affiant's own knowledge indicating that the accused had previously trafficked in contraband. A policeman's knowledge of a suspect's reputation is a practical consideration of everyday life upon which an officer or a magistrate may properly rely in assessing the reliability of an informant's tip.

For purposes of determining whether an affidavit is sufficient to establish probable cause for a search warrant, the informant's declaration against interest is reason for crediting his tip. The affidavit recited that the informant feared for his life and safety if his identity was revealed and that over the past two years he had many times and recently purchased contraband from the accused. These statements are against the informant's penal interest, for they constitute an admission of major elements of an offense. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility.

Illinois v. Gates
462 U.S. 213, 103 S.Ct 2317 (1983)

FACTS: Police received an anonymous letter which included statements that the defendants, husband and wife, were selling drugs. The letter indicated Mrs. Gates would drive the Gates' car to Florida on May 3rd to be loaded with drugs, and Mr. Gates would fly down a few days later to drive the car back; that the car's trunk would be loaded with drugs; and that defendants presently had over $100,000 worth of drugs in their basement. A police officer located the Gates' address and learned that Mr. Gates made a reservation for a May 5th flight to Florida. Arrangements for surveillance of the flight where made with a DEA agent. The surveillance disclosed that Mr. Gates took the flight, stayed overnight in a motel room registered in Mrs. Gates name, and left the following morning with a woman in a car bearing an Illinois license plate issued to Mr. Gates, heading North on an interstate highway. A search warrant for defendants' residence and automobile was then obtained based on the police officer's affidavit and the anonymous letter.

When the defendants arrived home, the police were waiting for them, and discovered marijuana and other contraband in the defendants' car trunk and home.

ISSUE: Whether the officers' affidavit and the anonymous letter establish sufficient facts to satisfy the *Aguilar-Spinelli* probable cause test?

HELD: No. However, the Supreme Court created a totality-of-the-circumstances test.

DISCUSSION: The facts failed to meet the "two-pronged test" of (1) revealing the informant's "basis of

knowledge" and (2) providing sufficient facts to establish either the informant's "veracity" or the "reliability" of the informant's report. However, the Court held that the overly rigid *Aquilar-Spinelli* test should be set aside when a common-sense test is more useful in determining whether "probable cause" exists. The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, there is a fair probability that contraband or evidence of a crime will be found in a particular place. The duty of a reviewing court is to ensure that the magistrate has a substantial basis for concluding that probable cause existed. Therefore, the Court could apply a "totality of the circumstances" test to replace the *Aguilar-Spinelli* test.

c. CORROBORATION AND OTHER FACTS

d. TIMELINESS

Sgro v. United States
287 U.S. 206, 53 S.Ct. 138 (1932)

FACTS: A magistrate issued a search warrant on July 6th and it was not executed until after the ten day limit had expired.

ISSUE: Whether the warrant was still valid?

HELD: No. Search warrants must be served within ten days of their issue.

DISCUSSION: The proof of probable cause which must be made before a search warrant can be issued must be closely related in time to the issuance of the warrant. Whether the proof meets this test is determined by the circumstances of each case.

"While the statute does not fix the time within which proof of probable cause must be taken by the judge or commissioner, it is manifest that the proof must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time. Whether the proof meets this test must be determined by the circumstances of each case. It is in the light of the requirement that probable cause must properly appear when the warrant issues that we must read the provision which in explicit terms makes a warrant void unless executed within ten days after its date. That period marks the permitted duration of the proceeding in which the warrant is issued. There is no provision which authorizes the commissioner to extend its life or to revive it."

e. DOG ALERTS

United States v. Place
462 U.S. 696, 103 S.Ct. 2637 (1983)

FACTS: The defendant's behavior aroused the suspicion of law enforcement officers as he waited in line at the Miami International Airport to purchase a ticket to New York's LaGuardia Airport. The officers approached the defendant and requested and received identification. There was a discrepancy in the name given by the defendant and the baggage tags. The defendant gave permission to the officers to open his luggage. Because the defendant's flight was about to leave, the officers decided not to search his luggage. They called DEA in New York and relayed their information. Upon the defendant's arrival in New York, two DEA agents approached him and said that they believed he might be carrying narcotics. When he refused to

consent to a search of his luggage, one of the agents told him they were going to take the luggage to a federal judge to obtain a search warrant. The agents took the luggage to Kennedy Airport where it was subjected to a "sniff test" by a drug dog. The dog reacted positively to one of the suitcases. At this point, ninety minutes had elapsed since the seizure of the luggage. The agents obtained a search warrant and opened the luggage. They discovered cocaine inside.

ISSUE: Whether the “sniff test” was a search within the meaning of the Fourth Amendment?

HELD: No. The drug dog sniffs air surrounding the bag, an area in which the suspect has no reasonable expectation of privacy

DISCUSSION: Subjecting luggage to a "sniff test" by a trained narcotics dog is not a search under Fourth Amendment. The dog is sniffing the air that surrounds the container and the defendant has no reasonable expectation of privacy in this air.

When officers have reasonable suspicion to believe that a traveler is carrying luggage that contains contraband, the principles of *Terry* permit the officer to detain the luggage temporarily to investigate the circumstances that aroused the officer's suspicion, provided that the investigative stop is properly limited in scope. However, in this case, the extended duration of the detention of defendant's luggage was unreasonable as a *Terry* seizure.

D. WARRANTS ISSUED ON ORAL TESTIMONY

Franks v. Delaware
438 U.S. 154, 98 S.Ct. 2674 (1978)

FACTS: Police obtained a search warrant to search the defendant's premises for clothing worn during a rape. According to the defendant, the affidavit contained untrue statements. He moved to suppress the search warrant based on the untruthfulness of the affidavit.

ISSUE: Whether the defendant is entitled to a hearing when he makes specific allegations of deliberate or recklessly used material false statements in an affidavit upon which a search warrant was issued?

HELD: Yes.

DISCUSSION: "Where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. . . ."

E. EXECUTION OF THE SEARCH WARRANT

1. AUTHORITY TO REQUEST FEDERAL SEARCH WARRANT

2. TIME LIMITS

3. FORCING ENTRY

Sabbath v. United States
391 U.S. 585, 88 S.Ct. 1755 (1968)

FACTS: A narcotics carrier was intercepted at the border and agreed to make a controlled delivery to the Los Angeles home of the defendant. The carrier entered the defendant's apartment and gave the required signal. Customs agents knocked on the door, received no response, and opened the door. They entered, arrested the defendant and found narcotics. At no time did the agents obtain a warrant.

ISSUE: Whether federal agents are required to conform with 18 U.S.C. § 3109 when making a warrantless entry to make an arrest?

HELD: Yes. Federal agents are required to conform with 18 U.S.C. § 3109 when making a warrantless entry to make an arrest.

DISCUSSION: The government agents had no basis for assuming that the defendant, the occupant of the apartment, was armed or might resist arrest, or that the cooperating carrier was in any danger. The agents had made no independent investigation of the defendant prior to setting the stage for his arrest with narcotics in his possession. Therefore, non-compliance with §3109, requiring the announcement of presence and notice of authority or purpose before the agents may break down any door was not excused. The Court identified the opening of a closed but unlocked door, lifting a latch, turning a door knob, unhooking a chain, pushing open a hasp, or pushing open a closed door of entrance to a house, even a closed screen door is a breaking with regard to §3109.

Richards v. Wisconsin
520 U.S. 385, 117 S.Ct. 1416 (1997)

FACTS: Officers executed a drug search warrant at the defendant's motel room. To gain entry, one officer hoped to fool the defendant by wearing a maintenance uniform. He knocked on the defendant's hotel room door, which the defendant opened. But when the defendant saw a uniformed officer in the hallway, he slammed the door shut. The officers immediately kicked the door open and apprehended the defendant, who was attempting to climb out the window. Drugs were found in the room.

ISSUE: Whether the officers' entry was in compliance with 18 U.S.C. § 3109?

HELD: Yes. The officers' entry was in compliance with 18 U.S.C. § 3109.

DISCUSSION: The Court held that officers do not have to comply with 18 U.S.C. § 3109 requirements when they develop reason to suspect that doing so would be: (1) dangerous, (2) futile, or (3) allow for the destruction of evidence. While the Supreme Court rejected the motion that all felony drug cases are inherently dangerous and, therefore, do not require the officers to knock and announce their presence, it found that the officers' behavior in this case to be reasonable.

United States v. Ramirez
523 U.S. 65, 118 S.Ct. 992 (1998)

FACTS: Shelby was a dangerous, escaped convict. An ATF agent learned from a reliable confidential informant that Shelby was probably staying at the defendant's home, also a convicted felon. Based on this information, Deputy U.S. Marshals obtained a search warrant and permission to enter the premises without complying with 18 U.S.C. § 3109. The informant also stated that the defendant might have a stash of weapons in his garage. Early in the morning, the Deputy Marshals used a loud speaker to announce that they had a search warrant. At the same moment one Deputy Marshal broke a window in the garage. He pointed a gun at the opening to discourage a rush for the weapons feared to be inside. The defendant believed people were burglarizing his home and fired a shot into the ceiling of his garage. Moments later, he realized that the persons attempting to enter his home were law enforcement officers and he submitted to their authority. Shelby was not found. However, weapons were located in the premises. The defendant was charged with possession of firearms by a felon.

ISSUE: Whether law enforcement officers are held to a heightened standard of scrutiny when they destroy property pursuant to a "no-knock" entry?

HELD: No. Law enforcement officers are not held to a heightened standard of scrutiny when they destroy property pursuant to a "no-knock" entry.

DISCUSSION: All searches must be reasonable to meet the Fourth Amendment. The manner in which the officers entered the premises to conduct the search is subject to review by a court in determining the reasonableness of that search. The Court held that while there is no absolute prohibition against the destruction of property upon entry, it is a factor that should be considered in determining the reasonableness of the search. In the case here, the Court held that the destruction of a single window to provide a deterrent against dangerous individuals that may arm themselves with suspected weapons was reasonable. Therefore, the search met the standards of the Fourth Amendment.

4. SEARCHES, SEIZURES AND THE SCOPE OF THE WARRANT

Wilson v. Layne
526 U.S. 603, 119 S.Ct. 1692 (1999)

FACTS: Deputy U.S. Marshals attempted to execute an arrest warrant for Dominic Wilson, at his last know place of residence. Unbeknownst to the Deputy Marshals, the address was actually that of his parents. The arrest team invited a newspaper photographer and reporter to accompany them on the execution of the arrest warrant. The Deputy Marshals entered Wilson's parents' home, in a futile effort to arrest him. The report and photographer also entered the home, and the photographer took many pictures of the event. After learning that the subject of the warrant was not at the premises, the Deputy Marshals and the newspaper reporter and photographer left the premises. The Wilsons sued the Deputy Marshals in a *Bivens* action for violating their Fourth Amendment right to be free from unreasonable searches and seizures.

ISSUE: Whether the inclusion of third parties in the arrest team that do assist in the execution of a warrant is unreasonable?

HELD: Yes. The government may only permit third parties to enter a searched premises that will assist in the purpose of the intrusion.

DISCUSSION: The Court found no problem with the Deputy Marshals' entry into the dwelling to execute an arrest warrant. However, the intrusion that the arrest warrant permitted is limited in scope to making an arrest. The government could not state a valid claim for the intrusion into the private home of a newspaper reporter and photographer as they in no way assisted in the objective of the arrest warrant, to effect an arrest. Therefore, the Court held their participation to be an unreasonable intrusion, and prohibited by the Fourth Amendment.

The Court also stated that because the Deputy Marshals could not have known at the time of the entry that the inclusion of nonessential third parties was a violation of the Wilsons' Fourth Amendment protections, the officers were entitled to qualified immunity. The Court allowed the civil case against the Deputy Marshals to be dismissed on those grounds.

Hanlon v. Berger
526 U.S. 808, 119 S.Ct. 1706 (1999)

FACTS: The defendants sued Special Agents of the United States Fish and Wildlife Service for violation of damages caused by the conduct of petitioners had violated their Fourth Amendment rights. The defendants lived n a 75,000-acre ranch. A magistrate issued a warrant authorizing the search of "The Paul W. Berger ranch with appurtenant structures, excluding the residence"for evidence of "the taking of wildlife in violation of Federal laws." About a week later, a multiple-vehicle caravan consisting of government agents and a crew of photographers and reporters from CNN proceeded to a point near the ranch. The agents executed the warrant and explained that "Over the course of the day, the officers searched the ranch and its outbuildings pursuant to the authority conferred by the search warrant. The CNN media crew accompanied the officers and recorded the officers' conduct in executing the warrant."

ISSUE: Whether the officers can be held liable under *Bivens* for allowing persons not assisting in the execution of the warrant to intrude on the defendant's privacy?

HELD: Yes. Courts granted the government permission to intrude on privacy with the use of a search warrant for a singular purpose, to obtain items expressed in the warrant. Allowing a search warrant to be used for other, additional purposes is unreasonable.

DISCUSSION: The Supreme Court held in *Wilson v. Layne* that Fourth Amendment rights of homeowners were violated when officers allow members of the media to accompany them during the execution of a warrant. The inclusion of personnel that are not necessary to the successful completion of the search warrant is an unreasonable intrusion into the privacy of the defendants. However, the Supreme Court had not clearly established this right at the time the officers executed the search warrant at the defendant's ranch. Therefore, they were entitled to qualified immunity.

5. PLAIN VIEW

Horton v. California
496 U.S. 128, 110 S.Ct. 2301 (1990)

FACTS: The defendant was convicted of the armed robbery of Wallaker, the treasurer of a coin club. When Wallaker returned to his home after the club's annual show, he entered his garage and was accosted by two masked men, one armed with a machine gun and the other with an electrical "stun gun." The two men

shocked Wallaker, bound and handcuffed him, and robbed him of jewelry and cash.

The officer investigating the crime determined that there was probable cause to search the defendant's home for evidence of the robbery. His affidavit for a search warrant referred to both the weapons as well as the proceeds, but the search warrant issued by the Magistrate only authorized a search for the proceeds.

During the execution of the warrant, the officer did not find the stolen property. However, he discovered the weapons in plain view and seized them. The officer testified that while he was searching for the rings, he also was interested in finding other evidence connecting the defendant to the robbery. Thus, the seized evidence was not discovered "inadvertently."

ISSUE: Whether the warrantless seizure of evidence of crime in plain view must be inadvertent?

HELD: No. The discovery of evidence of crime does not have to be inadvertent.

DISCUSSION: The Court distinguished between search and seizure interests protected by the Fourth Amendment. A search compromises the person's interest in privacy; a seizure deprives the person of possession of the property. The seizure of an item in plain view does not involve an intrusion on a person's privacy.

An essential predicate to any valid plain view seizure is that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence was plainly viewed, i.e. the officer must be lawfully present. The incriminating character of the object must also be "immediately apparent."

In this case, the items seized from defendant's home were discovered during a lawful search authorized by a valid warrant. The officer was legally present. When they were discovered, it was immediately apparent to the officer that they constituted incriminating evidence. In this case, the seizure was reasonable.

6. SEARCH, DETENTION, AND ARREST OF PERSONS ON PREMISES

Michigan v. Summers
452 U.S. 693, 101 S.Ct. 2587 (1981)

FACTS: As police officers were about to execute a warrant to search a house for narcotics, they encountered the defendant descending the front steps. They detained him while they searched the premises. After finding narcotics in the basement and ascertaining that the defendant owned the house, the police arrested him, searched his person, and found in his coat pocket an envelope containing 8.5 grams of heroin. The defendant was not free to leave the premises while the officers were searching his home.

ISSUE: Whether the detention of the defendant violated his constitutional right to be secure against an unreasonable seizure of his person?

HELD: No. It was reasonable to detain the suspect while they executed the search warrant.

DISCUSSION: Some seizures constitute such a limited intrusion of those detained and are justified by a substantial law enforcement interest that they may be made on less than probable cause. However, the police

must have an articulable basis for suspecting criminal activity. This is based on the reasonableness standard of the Fourth Amendment.

The Court states three reasons supporting the defendant's seizure:

1. The legitimate law enforcement interest in preventing flight in the event that incriminating evidence is found.

2. The interest in minimizing the risk of harm to the police and occupants. The execution of a search warrant for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence.

3. The orderly completion of the search may be facilitated if the occupants are present, i.e. to open locked doors or locked containers to avoid the use of force that not only is damaging to property but may also delay the completion of the task at hand.

Ybarra v. Illinois
444 U.S. 85, 100 S.Ct. 338 (1979)

FACTS: A search warrant was issued for the Aurora Tap Tavern and the person of Greg, the bartender. Several officers proceeded to the tavern. Upon entering the tavern, the officers announced their purpose and advised all those present that they were going to conduct a "cursory search for weapons." One of the officers patted down each of the nine to thirteen customers present in the tavern, while the remaining officers engaged in an extensive search of the premises.

The officer who frisked the patrons found the defendant in front of the bar standing by a pinball machine. In his first pat down of the defendant, the officer felt what he described as "a cigarette pack with objects in it." He did not remove this pack from the defendant's pocket. Instead, he moved on and proceeded to frisk other customers.

After completing this process the officer returned to the defendant and frisked him once again. The officer relocated and retrieved the cigarette pack from the defendant's pants pocket. Inside he found six tin foil packets containing a brown powdery substance which was later determined to be heroin.

ISSUE: Whether the frisk of the defendant was justified based on the fact that he was at the scene of a search warrant?

HELD: No. Frisks are only authorized if the officer has reason to suspect the suspect is armed and dangerous.

DISCUSSION: The Fourth Amendment does not permit searches of persons who, at the commencement of the search, are on the premises subject to a search warrant. Such searches cannot be based upon a reasonable belief on the part of police that such persons are connected with drug trafficking allegedly occurring on the premises, and that such persons may be concealing or carrying away contraband. A person's proximity to others independently suspected of criminal activity does not, without more, give rise to justify a search.

The officer's justification for the search of the defendant rested on a state statute permitting a police officer, in the execution of a search warrant, to reasonably detain and search any person on the premises covered by the warrant in order to either protect himself from attack, or to prevent the disposal or concealment of anything particularly described in the warrant. This statute contravenes the Fourth Amendment where:

1. No probable cause existed at the time the search warrant was issued for the authorities to believe that any person found in the tavern other than the employee would be violating the law;

2. There was no probable cause to search the patron at the time the warrant was executed;

3. The customers in the tavern maintained their own protection against an unreasonable search or seizure which was separate and distinct from that possessed by the proprietor of the tavern or by the employee, and;

4. The initial frisk of the customer was not supported by a reasonable belief that he was armed and dangerous. It could not yield probable cause to support the second, more extensive search.

V. SEARCHES NOT REQUIRING WARRANTS (Probable Cause Required)

A. SEARCHES OF VEHICLES, VESSELS, AND AIRCRAFT

Carroll v. United States
267 U.S. 132, 45 S.Ct. 280 (1925)

FACTS: Undercover prohibition agents met with the defendant to buy illegal whiskey. The defendant left to get the whiskey but because his source was not in, told the agents he would deliver it the next day. However, the vehicle did not return.

A week later, while patrolling a highway commonly used to smuggle whiskey into the country the agents saw the defendant in the same car as before. They gave pursuit but lost the car. One week after that, the agents again saw the defendant in the same car on the same road. The agents believed they had probable cause that the defendant was carrying liquor and therefore pursued him in order to arrest him. The agents stopped the defendant, searched the car, and found sixty-eight bottles of illegal whiskey.

ISSUE: Whether the search of the defendant's automobile without a warrant violated the Fourth Amendment?

HELD: No. When an officer stops a car based on probable cause and conducts a search in order to preserve evidence due to the automobile's mobility, the search may be conducted without a warrant.

DISCUSSION: The guarantee of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed as recognizing a necessary difference between a search of a store, dwelling or other structure (whereby a warrant readily may be obtained) and a search of a ship, motor boat, or automobile (where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought). Therefore, contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant if the agent has probable cause to believe the car contains contraband. The search of the defendant's car was not unreasonable under the Fourth Amendment when considering the circumstances known to the officers in this case.

Chambers v. Maroney
399 U.S. 42, 90 S.Ct. 1975 (1970)

FACTS: A gas station was robbed by two men, each of whom carried and displayed a gun. Two teenagers, who had earlier noticed a blue compact station wagon circling the block in the vicinity of the station, then saw the station wagon speed away from a parking lot close to the station. About the same time, they learned that the station had been robbed. They reported to the police that four men were in the station wagon and each was wearing a green sweater. The station attendant reported that one of the men who robbed him was wearing a green sweater and the other a trench coat. A description of the car and the two robbers were broadcast over the police radio. Within an hour, a light blue compact station wagon meeting the description and carrying four men was stopped by the police about two miles from the station. The defendant was one of the men in the station wagon. He was wearing a green sweater and there was a trench coat in the car. The occupants were arrested and the car was driven to the police station where it was thoroughly searched without a warrant. The search revealed two .38 caliber revolvers in a compartment

under the dashboard and other evidence related to the robbery.

ISSUE: Whether the warrantless search of the automobile after being taken to the police station, and the seizure of the evidence was lawful?

HELD: Yes. A warrantless search is valid despite the fact that a warrant could have been procured without endangering the preservation of evidence.

DISCUSSION: Automobiles and other conveyances may be searched without a warrant, provided there is probable cause to believe that the car contains articles that the officers are entitled to seize. Having established that contraband concealed in a vehicle may be searched for without a warrant, the Court considered the circumstances under which such search may be made.

The Court saw no difference between seizing and holding a car before presenting probable cause to a magistrate, and carrying out an immediate search without a warrant. Given probable cause to search, the Court held that either course is reasonable under the Fourth Amendment. The light blue station wagon could have been searched on the spot where it was stopped since there was probable cause to search. Thus, the warrantless search was reasonable.

Cardwell v. Lewis
417 U.S. 583, 94 S.Ct. 2464 (1974)

FACTS: Police officers focused their investigation of a murder on the defendant. Officers went to the defendant's place of business to question him and observed his car which they suspected might have been used in the murder. Several months later, the defendant was questioned again. By then an arrest warrant was obtained. The defendant drove his car to the station for questioning and left his car at a commercial parking lot. The suspect was arrested and the car was towed to a police impound lot where a warrantless examination of the exterior was conducted the next day.

ISSUE: Whether the examination of an automobile's exterior upon probable cause is reasonable under the Fourth Amendment?

HELD: Yes. The examination of the exterior of the defendant's automobile based upon probable cause was reasonable and invaded no right to privacy that the requirement of a search warrant is meant to protect.

DISCUSSION: Nothing from the interior of the car and no personal effects, which the Fourth Amendment traditionally has been deemed to protect, were searched or seized. The intrusion was limited to the exterior of the vehicle left in a public lot. No reasonable expectation of privacy is violated by the examination of a tire on an operative wheel or in the taking of exterior paint samples from a vehicle which had been parked in a public place. Further, the police had probable cause to search the car. Where probable cause exists, a warrantless examination of the exterior of an auto is not unreasonable under the Fourth Amendment.

Cooper v. California
386 U.S. 58, 87 S.Ct. 788 (1967)

FACTS: Police officers arrested the defendant and seized his car for a narcotics violation in which the car was used. A state law directed any officer making an arrest for a narcotics violation to seize and deliver any vehicle used to store, conceal, transport, sell, or facilitate the possession of narcotics. "Such vehicle to be held as evidence until a forfeiture has been declared or a release order issued." A search made of the automobile a week later revealed evidence used in trial against the defendant.

ISSUE: Whether the warrantless search of the defendant's automobile, seized by the authority of a state statute, made a week after his arrest, and not incidental thereto, was reasonable by Fourth Amendment standards?

HELD: Yes. Law enforcement officers are permitted to search a car that they are going to retain for a significant period of time.

DISCUSSION: A warrantless search of an arrested person's automobile, made a week after his arrest and not incident to that arrest, is reasonable where the arrest is for a narcotics violation. Evidence showed that the car had been used to carry on his narcotics possession and transportation activities. A state statute required police in such circumstances to seize the vehicle and hold it as evidence until a forfeiture was declared or a release ordered.

It is not a defense to argue that the police could have obtained a search warrant. The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable. Under the circumstances of this case, it was reasonable under the Fourth Amendment to search the defendant’s car validly held by officers for use as evidence in a forfeiture proceeding.

United States v. Ross
456 U.S. 798, 102 S.Ct. 2157 (1982)

FACTS: A reliable informant telephoned the police and told them that the defendant was selling narcotics from the trunk of his car. He also said that he had just observed the defendant complete a sale, and that the defendant told him that additional narcotics were in the trunk. The informant gave a detailed description of the defendant and the car.

Officers immediately drove to the area and found a car matching the informant’s description. A check of the license plate disclosed that the car was registered to the defendant. The driver fit the informant's description of the defendant. The officers told the defendant to get out of the car. A search revealed a bullet on the car's front seat. The officer searched the interior of the car and found a pistol in the glove compartment. The defendant was then arrested and handcuffed. Another officer searched the trunk of the car and found a closed brown paper bag which contained a number of glassine bags containing heroin. The car was moved to the police station where it was again searched. In the trunk the officer found a zippered red leather pouch which contained $3,200 in cash.

ISSUE: Whether officers, who have lawfully stopped an automobile and have probable cause to believe that contraband is concealed somewhere within it, may conduct a search of compartments and containers within the vehicle whose contents are not openly visable?

HELD: Yes. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.

DISCUSSION: Since the police lawfully stopped the automobile and had probable cause to believe that contraband was contained in it, they could conduct a warrantless search of the vehicle. Such a search could be as thorough as one authorized by a warrant issued by a magistrate. Every part of the vehicle where the contraband might be stored could be searched. This includes all recepticles and packages that could possibly contain the object of the search.

Florida v. Myers
466 U.S. 380, 104 S.Ct. 1852 (1984)

FACTS: The defendant was charged with sexual battery. At the time of his arrest, police officers searched his automobile and seized several items. The automobile was subsequently towed to a wrecker where it was impounded in a locked and secure area. Eight hours later, a police officer went to the compound and without obtaining a warrant, searched the car again. Additional evidence was seized.

ISSUE: Whether a warrantless search, conducted after the initial search incident to an arrest and after the automobile was impounded and in police custody, violates the Fourth Amendment?

HELD: No. A warrantless search of an automobile impounded and in police custody conducted eight hours after a valid initial search is proper.

DISCUSSION: The justification for the initial warrantless search did not vanish once the car had been immobilized. In *Michigan v. Thomas*, the Court upheld a warrantless search of an automobile even though the automobile was in police custody and a prior inventory search of the car had already been made. That case specifically rejected the argument that the justification to conduct a warrantless search vanishes once the car has been taken into police custody and impounded.

California v. Carney
471 U.S. 386, 105 S.Ct. 2066 (1985)

FACTS: The DEA had information that the defendant was exchanging marijuana for sex in a motor home parked in a lot in downtown San Diego. The DEA stopped a youth, who had entered and then left the motor home. He stated he had received marijuana in return for allowing the defendant sexual contact. The youth, at the agent's request, went back to the motor home, knocked on the door, and the defendant stepped out. The agent went inside and observed marijuana. A subsequent search revealed additional marijuana.

ISSUE: Whether a motor home used as a residence is a motor vehicle for purposes of the motor vehicle exception?

HELD: Yes. A mobile home is treated as a vehicle, rather than a dwelling, if it is immediately mobile.

DISCUSSION: When a vehicle is being used on highways or is capable of that use and is found stationary in a place not regularly used for residential purposes, two justifications for the vehicle exception to the warrant

requirement came into play. First, that the vehicle is readily mobile. Second, there is a reduced reasonable expectation of privacy stemming from the pervasive regulation of vehicles. Under these circumstances, the overriding societal interests in effective law enforcement justify an immediate search before the vehicle and its occupants become unavailable.

In this case, the defendant's vehicle possessed many attributes of a home. However, the vehicle falls clearly within the scope of the automobile exception since the defendant's motor home was readily mobile. While the vehicle is capable of functioning as a home, to distinguish between a motor home and a typical car would require that the auto exception be applied depending upon the size of the vehicle and the quality of its appointments. The Court was not willing to make this distinction. Therefore, under the vehicle exception to the warrant requirement, the search of the defendant's motor home was reasonable.

California v. Acevedo
500 U.S. 619, 111 S.Ct. 1982 (1991)

FACTS: The police made a controlled delivery of packages of marijuana. The man took the package to his apartment. The police then observed the defendant enter the man's apartment, where he stayed for about ten minutes. The defendant then reappeared carrying a brown paper bag that looked full. The bag was the size of one of the wrapped marijuana packages. The defendant placed the package in the trunk of his car and started to drive away. Fearing the loss of evidence, police officers, without a warrant, stopped him, opened the trunk and the bag, and found marijuana.

ISSUE: Whether the Fourth Amendment requires the police to obtain a warrant to open a container in a moveable vehicle.

HELD: No. In a search extending only to a container within an automobile, police may search the container without a warrant where they have probable cause to believe that it holds contraband or evidence.

DISCUSSION: The Court reviewed the *Chadwick* and *Sanders* cases, which stressed the heightened privacy expectation in personal luggage and concluded that the presence of luggage in an automobile did not diminish the owner's expectation of privacy in his personal items. The *Chadwick* doctrine governed searches of luggage when the officers had probable cause to search only a container within the vehicle.

The Court in *Ross* took the critical step of saying that closed containers in cars may be searched without a warrant because of their presence within the automobile. The privacy interest in those closed containers yielded to the broad scope of an automobile search. The Court saw no principled distinction in terms of either the privacy expectation or the exigent circumstances between the paper bag found by the police in *Ross* and the paper bag found by the police here.

The warrant requirement set forth in *Sanders* was explicitly overruled. *Ross* now applies to all searches of containers found in an automobile; i.e. the police may search an automobile and the containers within it where they have probable cause to believe that contraband or evidence is contained. "The scope of a warrantless search of an automobile . . . is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found." However, the Court reaffirmed the principle that "probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab."

Wyoming v. Houghton
526 U.S. 295, 119 S.Ct. 1297 (1999)

FACTS: Sandra Houghton was one of two female passengers in a lawfully stopped automobile. While the law enforcement officer was questioning the driver, David Young, he noticed a syringe in the Young's shirt pocket. The officer asked Young to step out of the car and asked why he had a syringe. Young stated the syringe was used to take drugs. At this point, the officer conducted a search of the automobile, in search of contraband. On the back seat of the automobile, he found a purse, which was claimed by Houghton. Inside the purse the officer located a wallet containing Houghton's driver's license. Continuing his search, the officer found a brown pouch and a black, wallet-type container. Houghton denied ownership of the brown pouch but admitted that the black wallet belonged to her. The officer found contraband in both containers. After finding fresh needle track marks in Houghton's arm, the officer placed her under arrest.

ISSUE: Whether a law enforcement officer is justified in searching passenger's containers under the mobile conveyance exception to the Fourth Amendment's warrant requirement?

HELD: Yes. A law enforcement officer is justified in searching passenger's containers under the mobile conveyance exception to the Fourth Amendment's warrant requirement.

DISCUSSION: The Supreme Court stated that the officer's probable cause to search the automobile was incontestable. Once establishing probable cause existed, the Court limited its discussion to determining the scope of that search. Citing *U.S. v. Ross*, 456 U.S. 798, at 825 (1982), the Supreme Court stated that "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." In the case at hand, the Court held that this would include containers that belong to passengers. In doing so, the Court rejected ownership as a factor to be considered by the officer before conducting a search. While the Court held that the containers of passengers were subject to a search of the mobile conveyance, this same rationale could not be applied to the body of the passengers because of the significantly heightened protection traditionally provided to one's person.

United States v. Johns
469 U.S. 478, 105 S.Ct. 881 (1985)

FACTS: Pursuant to an investigation of a suspected drug smuggling operation, Customs officers observed two pickup trucks as they traveled to a remote private landing strip, and the arrival and departure of two small airplanes. The officers smelled the odor of marihuana as they approached the trucks and saw in the back seat packages wrapped in dark green plastic and sealed with tape, a common method of packaging marihuana. The officers arrested the defendant and took the pickup trucks to DEA headquarters. Three days later, without obtaining a search warrant, the agents opened some of the packages and took samples which proved to be marihuana.

ISSUES: Whether a warrantless search of the packages three days after they were removed from vehicles is justified under the mobile conveyance exception to the warrant requirement?

HELD: Yes. The Supreme Court held that if the officers have probable cause to look for evidence

in a mobile conveyance, they do not need to obtain a warrant.

DISCUSSION: The warrantless search of the packages was not unreasonable merely because it occurred three days after the packages were seized. The *Ross* case established that the officers could have searched the packages when they were first discovered in the trucks at the airstrip. Moreover, there is no requirement that a *Carroll* search of a vehicle occur contemporaneously with its lawful seizure.

Because the officers had probable cause to believe that the trucks and packages contained contraband, any expectation of privacy in the vehicles or their contents was subject to the officers' authority to conduct a warrantless search. The warrantless search was not unreasonable merely because the officers returned to the DEA headquarters and placed the packages in storage rather than immediately open them.

Pennsylvania v. Labron
518 U.S. 938, 116 S.Ct. 2485 (1996)

FACTS: Police observed Labron engaging in a drug transaction. They pulled him over and arrested him. The police searched his car and found cocaine in the trunk. The Supreme Court of Pennsylvania suppressed the cocaine because the officers could have obtained a search warrant before they searched the defendant's car under the *Carroll* doctrine.

ISSUE: Whether the officers need to establish exigent circumstances before searching a car under the mobile conveyance exception to the Fourth Amendment's warrant requirement.

HELD: No. The officers did not need to establish exigent circumstances before searching a car under the mobile conveyance exception to the Fourth Amendment's warrant requirement.

DISCUSSION: The Supreme Court adopted the mobile conveyance exception to the warrant requirement of the Fourth Amendment because of the necessity of coping with rapidly disappearing objects. However, the Court has shifted the focus of this exception from the exigency of the speed of the vehicle to the fact that persons have only a reduced expectation of privacy in an automobile. The Court discarded the original requirement that the government establish that the automobile searched was in immediate danger of disappearing. The Court stated "if a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." If the officer has probable cause and the automobile is capable of imminent mobility, the mobile conveyance exception applies to the search.

Maryland v. Dyson
527 U.S.465, 119 S.Ct. 2013 (1999)

FACTS: A Deputy Sheriff received a tip from a reliable informant that the defendant was about to transport cocaine from New York. The informant stated that the defendant had rented a red Toyota Corolla with the license plate number of DDY 787 for the transportation. The deputy verified that the defendant, a known drug dealer, rented such a vehicle. Several hours later, law enforcement officers stopped this vehicle and searched it. Twenty-three grams of cocaine were found in the trunk. The Maryland appellate court found the officers had probable cause but suppressed the evidence because the officers had time to secure a

search warrant but failed to do so.

ISSUE: Whether officers must obtain a search warrant for a mobile conveyance, after developing probable cause, if they have the time to secure one?

HELD: No. Officers are not required to obtain a search warrant for a mobile conveyance even if they have time to secure one.

DISCUSSION: Generally, the Court requires a search warrant to conduct a search under the Fourth Amendment. However, the Supreme Court has offered a variety of exceptions to the warrant requirement. One of these exceptions is the mobile conveyance, or automobile, exception. The Supreme Court originally created the automobile exception to the warrant requirement because of the exigency caused by their mobility. In an earlier line of cases, the Supreme Court held that if the government had time to secure a warrant, it must do so. However, in 1982 (*Ross v. U.S.*) the Supreme Court discarded this principle. Under the current principle of law, the government may conduct a search of an automobile if it has probable cause and the item searched is immediately mobile (an automobile). The Court no longer requires the government to prove that an additional exigency is compelling the warrantless search other than the vehicle's mobility.

B. SEARCHES UNDER EXIGENT CIRCUMSTANCES
EXIGENT CIRCUMSTANCES OTHER THAN VEHICLES

Cupp v. Murphy
412 U.S. 291, 93 S.Ct. 2000 (1973)

FACTS: The defendant's wife was murdered by strangulation. Word of the murder was sent to the defendant and he voluntarily went to the police station for questioning where he was met by his attorney. The police noticed a dark spot on his finger. Suspecting that the spot might be dried blood and knowing that evidence of strangulation is often found under an assailant's fingernails, the police asked the defendant if they could take a sample of scrapings from his fingernails. He refused. He then put his hands behind his back and appeared to rub them together. The defendant then put his hands in his pockets and a metallic sound was heard. Without a warrant, the police proceeded to forcefully take the samples, which turned out to contain traces of skin and blood cells, and fabric from the victim's nightgown.

ISSUE: Whether the warrantless fingernail scrapings taken by the police were the product of an unconstitutional search under the Fourth Amendment?

HELD: No. The Court found the existence of probable cause and the very limited intrusion undertaken at the station to preserve the readily destructible evidence was not an unconstitutional search.

DISCUSSION: The search of the defendant's fingernails went beyond mere physical characteristics constantly exposed to the public. It constituted the type of severe, though brief, intrusion upon personal security that is subject to constitutional scrutiny. However, this search was constitutional under the search incident to arrest exception to the warrant requirement.

When an arrest is made, it is reasonable for a police officer to expect the arrestee to use any weapons they may have and attempt to destroy any incriminating evidence then in their possession. The scope of a warrantless search, however, must be commensurate with the rationale that exempts the search from the warrant requirement. Therefore, a warrantless search incident to an arrest must be limited to the

area into which an arrestee might reach.

In contrast, when there is no formal arrest or a warrant, as in this case, a full scale body search is not allowable. However, even though the defendant was not arrested, he was sufficiently apprised of his suspected role in the crime to motivate him to attempt to destroy what evidence he could. His actions of putting his hands behind his back and then into his pockets were a sufficient indication of the possibility of the destruction of evidence.

Therefore, this action by the defendant, along with the existence of probable cause, justified the limited intrusion undertaken by the police to preserve the evidence under the defendant's fingernails.

United States v. Chadwick
433 U.S. 1 97 S.Ct. 2476 (1977)

FACTS: Railroad officials in San Diego observed two men load a footlocker onto a train bound for Boston. The officials noticed that the trunk was unusually heavy for its size, and that it was leaking talcum powder, a substance often used to mask the odor of marijuana. The officials reported their suspicions to federal agents in San Diego. The agents relayed the information, along with descriptions of the men and the footlocker, to their counterparts in Boston.

When the train arrived in Boston, federal agents were on hand. They did not have an arrest or search warrant, but had a police dog trained to detect marijuana. The agents identified the two men and kept them under surveillance. The agents released the dog when the men set the footlocker down on the floor. The dog signaled the presence of marijuana. The defendant joined the two men and they moved the footlocker to the defendant's waiting automobile. They lifted the footlocker into the trunk of the car. At this point, the agents arrested the defendant and his accomplices.

All three men, were taken into custody. The footlocker remained under the exclusive control of law enforcement officers at all times. The agents did not have any reason to believe that the footlocker contained explosives or other inherently dangerous items or that it contained evidence which would lose its value unless the footlocker was opened immediately. An hour and a half after the men were arrested, the agents opened the footlocker as a search incident to arrest. They did not have a search warrant or consent. Marijuana was found inside.

ISSUE: Whether a search warrant is required before agents can open a locked footlocker which they have lawfully seized at the time of the arrest of its owners, when they have probable cause to believe the footlocker contains contraband?

HELD: Yes. A warrant is required for a search of luggage or other property seized at the time of an arrest either if the search is remote in time or place from the arrest or if no exigency exists.

DISCUSSION: A footlocker is not open to public view and not subject to regular inspections. By placing personal effects inside a double-locked footlocker, the defendant manifested an expectation that the contents would remain free from public examination. Once the agents had seized the footlocker at the railroad station and had it safely transferred to their custody, there was no danger that its contents would have been removed before a search warrant could be obtained. With the footlocker safely immobilized, it was unreasonable to undertake the additional and greater intrusion of a search without a warrant.

Moreover, the search cannot be justified as a search incident to an arrest if the search is remote in time or place from the arrest. When a custodial arrest is made, it is reasonable for police to conduct a prompt, warrantless search of the arrestee's person and the area from within which the arrestee might gain possession of a weapon or destructible evidence. However, warrantless searches of a footlocker or luggage seized at the time of an arrest cannot be justified as incident to that arrest either if the search is remote in time or place from that arrest or no exigency exists. The search was conducted more than an hour after the defendant was arrested and the footlocker was under the exclusive control of the agents.

Mincey v. Arizona
437 U.S. 385, 98 S.Ct. 2408 (1978)

FACTS: An undercover narcotics agent and nine other officers raided the defendant's apartment for narcotics. During the raid, the undercover police officer was shot and killed and the defendant was wounded along with two other persons in the apartment. The narcotics agents, pursuant to a police department directive which stated that police officers should not investigate incidents in which they are involved, made no further investigation. Homicide detectives arrived to investigate, and they proceeded to conduct a four-day warrantless search of the defendant's apartment.

ISSUE: Whether the evidence from the warrantless search of the defendant's apartment was lawfully obtained the under a "murder scene" exception?

HELD: No. The "murder scene" exception does not exist. The fact that a homicide occurs does not, of itself, give rise to exigent circumstances to justify a four-day warrantless search.

DISCUSSION: When the police come upon the scene of a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises. The police may also seize any evidence that is in plain view during the course of their legitimate emergency activities. But a warrantless search must be strictly circumscribed by the emergency which justify its initiation.

In this case, all the persons in the defendant's apartment had been located before the investigating homicide officers arrived and began their search. Except for the fact that a homicide occurred, there were no exigent circumstances in this case. There was no indication that evidence would be lost, destroyed, or removed during the time required to obtain a search warrant. Therefore, the four-day search of the defendant's apartment was unreasonable under the Fourth Amendment.

Michigan v. Tyler
436 U.S. 499, 98 S.Ct. 1942 (1978)

FACTS: A fire broke out in the defendant's furniture store and the local fire department responded. When the fire chief arrived two hours later, the discovery of plastic containers of flammable liquid was reported to him. The chief summoned a detective to investigate possible arson. The detective took pictures but stopped any further investigation because of the smoke. Two hours later, the fire was extinguished and the firefighters departed. The fire chief and detective removed the containers and left. There was neither consent nor a warrant for any of these entries or for the removal of the containers. Four hours later, the chief and his assistant returned for a cursory examination of the building and removed more pieces of evidence. Three weeks later, a state police officer took pictures at the store and made an inspection where

further evidence was collected. Further entries were also made, all without warrants.

ISSUE: Whether all these warrantless governmental intrusions were reasonable?

HELD: No. Official entries to investigate the cause of a fire must adhere to the warrant procedures of the Fourth Amendment, unless the entry falls within one of the exceptions to the warrant requirement, such as the emergency exception.

DISCUSSION: The Fourth Amendment extends beyond the entry into a private dwelling by a law enforcement officer in search of evidence of a crime.

All entries are presumed illegal if no warrant is obtained. The Court has recognized several exceptions to this rule. A burning building presents an exigency of sufficient proportions to render a warrantless entry under the Fourth Amendment. Once firefighters are inside a building, they may remain there for the duration of the emergency. While there, the government may investigate the cause of the fire and may seize evidence of arson that is in plain view. In this case, no Fourth Amendment violation occurred by the firefighters' entry to extinguish the fire at the defendant's store, nor by the chief's removal of the plastic containers. Similarly, no warrant was required for the re-entries into the building and for the seizure of evidence after the departure of the fire chief and other personnel since these were a continuation of the first entry which was temporarily interrupted by smoke.

If an investigating official requires further access to gather evidence, they must obtain a warrant. To secure a warrant to investigate the cause of a fire, an official must show more than the bare fact that a fire has occurred. The government must establish probable cause that arson was committed.

Segura v. United States
468 U.S. 796, 104 S.Ct. 3380 (1984)

FACTS: DEA agents began a surveillance of the defendant. They observed "Colon" deliver a package to "Parra" at a restaurant parking lot while the defendant visited with "Vidal" inside the restaurant. The agents followed Parra and Vidal to their apartment and stopped them. Parra was found to have cocaine and she and Vidal were arrested. Vidal told the agents that he had purchased the cocaine from the defendant.

The agents were advised by a U.S. Attorney to arrest the defendant. The agents were also told that a search warrant for the defendant's apartment probably could not be obtained until the following day but to secure the apartment in the meantime to prevent the destruction of evidence. The agents arrested the defendant in the lobby of his apartment building, took him to the apartment, knocked on his door, and when it was opened by Colon, entered the apartment without requesting or receiving permission. The agents conducted a limited security check of the apartment and in the process, observed in plain view various drug paraphernalia. Colon was arrested and he and the defendant were taken into custody. Two agents remained in the apartment awaiting the warrant, but because of administrative delay, the warrant was not issued until nineteen hours after the initial entry. In the search pursuant to the warrant, the agents discovered cocaine and records of narcotics transactions.

ISSUE: Whether the initial entry by the officers was lawful?

HELD: Yes. When officers, having probable cause, enter premises, and secure the premises while

others, in good faith, are in the process of obtaining a search warrant, they do not violate the Fourth Amendment's proscription against unreasonable seizures.

DISCUSSION: A seizure only affects possessory interests while a search affects privacy interest. Therefore, a warrantless seizure of a person's property is reasonable on the basis of probable cause whereas a warrantless search may be impermissible. Thus, securing a dwelling on the basis of probable cause to prevent the destruction or removal of evidence while a search warrant is being sought is not unreasonable.

In this case, the agents had probable cause in advance to believe that there was a criminal drug operation being carried on in the defendant's apartment. Securing the premises from within was no more an interference with the defendant's possessory interests than a perimeter stakeout. Under either method, agents control the apartment pending the arrival of a search warrant. Further, there was no evidence that the agents exploited their presence while in the apartment; they simply awaited issuance of the warrant.

The exclusionary rule suppresses evidence not only obtained as a direct result of an illegal search or seizure, but also evidence later found to be derivative of the poisonous tree. However, evidence is not to be excluded if the connection between the illegal police conduct and the discovery and seizure of the evidence is so attenuated as to dissipate the taint. Therefore, whether the initial entry was legal is irrelevant to the admissibility of the challenged evidence because there was an independent source for the warrant under which that evidence was seized. None of the information on which the warrant was secured was based on the initial entry into the defendant's apartment.

Illinois v. Andreas
463 U.S. 765, 103 S.Ct. 3319 (1983)

FACTS: A large, locked metal container was shipped by air to the defendant. When the container arrived at the airport, a Customs inspector initiated a lawful border search and opened it. He found a wooden table approximately three feet in diameter and eight to ten inches thick inside. Marijuana was found concealed inside the table. The inspector informed the DEA of these facts and an agent came to the airport later that day. The agent chemically tested the substance contained in the table and confirmed that it was marijuana. The table and the container were resealed.

The next day, the agent put the container in a delivery van and drove to the defendant's building. He was met there by a police inspector. Posing as delivery men, the two men entered the apartment building and announced they had a package for the defendant. The defendant came to the lobby and identified himself.

At the defendant's request, the officers left the container in the hallway outside the defendant's apartment. The agent stationed himself to keep the container in sight and observed the defendant pull the container into his apartment. While the inspector left to secure a search warrant for the defendant's apartment, the agent maintained surveillance of the apartment. The agent saw the defendant leave his apartment, walk to the end of the corridor, look out the window, and then return to the apartment. The agent remained in the building but did not keep the apartment door under constant surveillance.

Between thirty and forty minutes after the delivery, but before the inspector could return with a warrant, the defendant reemerged from the apartment with the shipping container and was

immediately arrested by the agent and taken to the police station. There, the officers reopened the container and seized the marijuana found inside the table. The search warrant had not yet been obtained.

ISSUE: Whether the Fourth Amendment requires a search warrant to reopen a container that had previously been lawfully opened?

HELD: No. A reopening of a sealed container in which contraband drugs had been discovered in an earlier lawful border search is not a "search" within the Fourth Amendment where the reopening is made after a controlled delivery.

DISCUSSION: When a common carrier or Customs officer discovers contraband in transit, the contraband could simply be destroyed. However, this would eliminate the possibility of prosecuting those responsible. Instead, the police may make a "controlled delivery" of the container to the person to whom it is addressed. As long as the initial discovery of the contraband is lawful, neither the shipper nor the addressee has any remaining expectation of privacy in the contents. Therefore, the police may, at the conclusion of the controlled delivery, seize the container and re-open it without procuring a warrant.

Normally, the police will not let the container out of their sight between the time they discover the contraband and the time it is delivered to the addressee and then seized. However, even if there is a brief lapse in surveillance, this will not re-institute the addressee's justifiable expectation of privacy. In this case, the break in observation is not enough to re-institute the defendant's legitimate expectation of privacy in the contents of the container. The relatively short break in surveillance made it substantially unlikely that the defendant had removed the table or placed new items inside the container while he was in his apartment. Therefore, the seizure and re-opening of the container was not a Fourth Amendment search at all and it violated no reasonable expectation of privacy.

Welsh v. Wisconsin
466 U.S. 740, 104 S.Ct. 2091 (1984)

FACTS: A witness observed a car driving erratically which swerved off the road and came to a stop in an open field. No damage to any person or property occurred and the driver walked away from the scene. The police arrived a few minutes later and were told by the witness that the driver was either inebriated or sick. The police checked the car's registration and proceeded to the defendant's house. The defendant's step-daughter let the police in. The defendant was arrested for driving under the influence of an intoxicant. The penalty for a first offense under this statute was a noncriminal violation subject to a civil forfeiture proceeding for a maximum fine of $200.

ISSUE: Whether the Fourth Amendment prohibits the police from making a warrantless night entry of a person's house in order to arrest the person for a nonjailable traffic offense?

HELD: Yes. The exigent circumstances exception in the context of a home entry is limited to the investigation of serious crimes. Misdemeanors typically do not provide justification for a warrantless entry.

DISCUSSION: Before government agents may invade the sanctity of the home, the government must demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless entries. An important factor to be considered when determining whether any exigency exists is

the gravity of the underlying offense for which the arrest is being made. Although no exigency is created simply because there is probable cause to believe that a serious crime has been committed, a finding of exigent circumstances to justify a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense has been committed.

The defendant's warrantless arrest in his home for a non-criminal traffic offense cannot be justified on the basis of the hot pursuit doctrine because there was no immediate or continuous pursuit of the defendant from the scene of the crime. Also, his arrest cannot be justified on the basis of public safety because the defendant had already arrived home and had abandoned his car at the scene of the accident. Finally, the defendant's warrantless arrest cannot be justified as an emergency simply because evidence of the defendant's blood-alcohol level might have dissipated while the police obtained a warrant. Therefore, the defendant's arrest was invalid.

Thompson v. Louisiana
469 U.S. 17, 105 S.Ct. 409 (1984)

FACTS: Several deputies arrived at the defendant's home in response to a report of a homicide. The deputies entered the house, made a cursory search and discovered the defendant's dead husband. The defendant was lying unconscious in another bedroom due to an apparent drug overdose. According to the defendant's daughter, the defendant had shot her husband, ingested a quantity of pills in a suicide attempt, and then, called her daughter, informed her of the situation and requested help.

The daughter admitted the deputies into the house and directed them to the rooms containing the victim and the defendant. The deputies immediately transported the defendant to the hospital and secured the scene. Thirty-five minutes later, two members of the homicide unit arrived and conducted a follow-up investigation of the homicide and attempted suicide.

The deputies conducted a search of the house and found, among other things, a pistol inside a chest of drawers in the same room as the deceased body, a torn up note in a wastepaper basket in an adjoining bathroom, and another letter (alleged to be a suicide note) folded up inside an envelope containing a Christmas card on the top of a chest of drawers.

ISSUE: Whether the Fourth Amendment recognizes the "murder scene" exception to the search warrant?

HELD: No. There is no "murder scene" exception to the Fourth Amendment's warrant requirement.

DISCUSSION: Although the homicide investigators in this case had probable cause to search the premises, it is undisputed that they did not have a warrant. Therefore, for the search to be valid, it must fall within one of the narrowly and specifically delineated exceptions to the warrant requirement. In *Mincey v. Arizona*, the Supreme Court unanimously rejected the contention that one of the exceptions to the warrant clause is a murder scene exception. The Court noted that the police may make warrantless entries on premises where they reasonably believe that a person within is in need of immediate aid, and that they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises. The Court nonetheless held that the murder scene exception was inconsistent with the Fourth Amendment.

In this case, the warrantless search and seizure conducted at the home of the defendant by investigators who arrived at the scene thirty-five minutes after the woman was sent to the hospital is not valid

on the ground that there was a diminished expectation of privacy in the woman's home. The woman's call for medical help cannot be seen as an invitation to the general public that would have converted her home into the sort of public place for which no warrant to search would be necessary. Therefore, the warrantless search after the defendant was taken to the hospital was unreasonable.

Flippo v. West Virginia
120 S.Ct. 7 (1999)

FACTS: In response to a 911 telephone call, police officers arrived in a West Virginia state park. They found the defendant sitting outside a cabin with apparent injuries. They went into the cabin and found the body of a woman with fatal head wounds. Some officers took the defendant to a hospital. The officers closed off the area and searched the cabin and the area around it. They spent more than 16 hours inside the cabin, the officers took photographs, collected evidence, and searched through the contents of the cabin. During the search, the officers found and opened a closed briefcase. The briefcase contained various photographs and negatives that incriminated the woman's husband, the defendant.

ISSUE: Whether the discovery of a body authorized the officers to engage in the warrantless search of the defendant's cabin?

HELD: No. After a homicide crime scene is secured for police investigation, the police are not entitled to make a warrantless search of anything and everything found within the crime scene area, where they cannot invoke an exception to the Fourth Amendment's warrant requirement.

DISCUSSION: In a per curiam opinion expressing its unanimous view, the Court held that after a homicide crime scene is secured for police investigation, the police are not entitled to make a warrantless search of anything and everything found within the crime scene area, unless an exception to the warrant requirement is invoked. The Court reaffirmed its long held position that there is no such "homicide crime scene" exception. In *Mincey v. Arizona*, the Court noted that police may make warrantless entries onto premises if they reasonably believe a person is in need of immediate aid and may make prompt warrantless searches of a homicide scene for possible other victims or a killer on the premises. However, the Court explicitly rejected any general "murder scene," "homicide scene," or "crime scene" exception to the Fourth Amendment's warrant requirement. The officers would have been entitled to remove the victims for medical attention, secure the premises, and obtain a warrant to conduct a search.

Schmerber v. California
384 U.S. 757, 86 S.Ct. 1826 (1966)

FACTS: The defendant was arrested at a hospital for driving an automobile while under the influence of an intoxicating liquor. At the direction of a police officer, a blood sample was taken from the defendant's body by a physician at the hospital. The chemical analysis of the sample indicated that the defendant was intoxicated at the time of the accident.

ISSUE: Whether the warrantless, nonconsensual blood sample taken from the defendant violated the Fourth Amendment right to be free from unreasonable searches and seizures?

HELD: No. The Fourth Amendment does not prohibit the government from conducting minor

intrusions into an individual's body under stringently limited conditions.

DISCUSSION: The testing procedure in this case constitutes a search of the defendant as well as a seizure of his person within the meaning of the Fourth Amendment. However, the Fourth Amendment's function is not to eliminate all intrusions such as the one in this case, but against intrusions which are made in an unreasonable manner.

In this case, the police had probable cause to arrest the defendant and charge him with driving an automobile while under the influence of an intoxicating liquor. The officer who arrived at the scene shortly after the accident smelled liquor on the defendant's breath and testified that the defendant exhibited symptoms of drunkenness. The officer in this case might reasonably have believed that he was confronted with an emergency in which the delay necessary to obtain a warrant under the circumstances, threatened the destruction of evidence since the percentage of alcohol in the blood begins to diminish shortly after drinking stops. Therefore, the attempt to secure evidence of blood-alcohol content in this case was an appropriate incident to the defendant's arrest.

Similarly, the test chosen to measure the defendant's blood-alcohol level was a reasonable one. Extraction of blood samples for testing is a highly effective means of determining the degree to which a person is under the influence of alcohol. The quantity of blood extracted is minimal and the procedure involves virtually no risk, trauma, or pain. Finally, the test was performed in a reasonable manner. The blood was taken by a physician at a hospital according to accepted medical practices. Therefore, there was no violation of the defendant's rights under the Fourth Amendment to be free from unreasonable searches and seizures.

VI. SEARCHES REQUIRING NEITHER A WARRANT NOR PROBABLE CAUSE

Terry v. Ohio
392 U.S. 1, 88 S.Ct. 1868 (1968)

FACT: Police Detective Martin McFadden had been a police officer for 39 years, a detective for 35 years and had been assigned this beat in downtown Cleveland for 30 years. At approximately 2:30 p.m. on October 31, 1963, Officer McFadden was patrolling in plain clothes. His attention was attracted by two men, Chilton and the defendant, standing on a corner. He had never seen the men before, and he was unable to say precisely what first drew his eye to them. His interest aroused, Officer McFadden watched the two men. He saw one man leave the other and walk past some stores. The suspect paused and looked in a store window, then walked a short distance, turned around and walked back toward the corner, pausing again to look in the same store window. Then the second suspect did the same. This was repeated approximately a dozen trips. At one point, a third man approached the suspects, engaged them in a brief conversation, and left. Chilton and the defendant resumed their routine for another 10-12 minutes before leaving to meet with the third man.

Officer McFadden testified that he suspected the men were "casing a job, a stick-up," and that he feared "they may have a gun." Officer McFadden approached the three men, identified himself and asked for their names. The suspects "mumbled something" in response. Officer McFadden grabbed the defendant, spun him around and patted down the outside of his clothing. Officer McFadden felt a pistol in the defendant's left breast pocket of his overcoat, which he retrieved. Officer McFadden then patted down Chilton. He felt and retrieved another revolver from his overcoat. Officer Mcfadden patted down the third man, Katz, but found no weapon. The government charged Chilton and the defendant with carrying concealed weapons. Chilton died before he could appeal his conviction to the United States Supreme Court.

ISSUES: 1. Whether the detective's actions amounted to a seizure?

2. Whether the detective's actions amounted a search that must be in compliance with the Fourth Amendment?

HELD: 1. Yes. Detective McFadden "seized" the defendant when he grabbed him.

2. Yes. Detective McFadden "searched" the defendant when he put his hands on the defendant's person.

DISCUSSION: The Constitution forbids not all searches and seizures. Nor does the Constitution forbid searches and seizures unless probable cause exists. The Constitution only forbids unreasonable searches and seizures. An officer "seizes" a person when he or she restrains their freedom to walk away. Likewise, there is a "search" when officer makes careful exploration of outer surfaces of person's clothing to attempt to find weapons. These searches and seizures must be reasonable to justify them under the Fourth Amendment.

In justifying any particular intrusion, the government must be able to point to specific and articulable facts that, taken with rational inferences from those facts, reasonably warrant that intrusion. Searches and seizures must be based on more than hunches, and simple good faith on part of officer in not enough.

The Court permitted Detective McFadden to conduct the limited intrusions of stopping the suspects based on articulable (reasonable) suspicion that criminal activity was afoot. The Court also found that Detective McFadden demonstrated reasonable suspicion that the men were armed and dangerous. Therefore, the Court sustained his limited intrusion onto their persons in search of weapons. While both standards are less than probable cause, the Court acknowledged that limited intrusions, based on articulated, reasonable suspicion are reasonable.

A. SEARCHES INCIDENT TO ARREST

Chimel v. California
395 U.S. 752, 89 S.Ct. 2034 (1969)

FACTS: Three officers arrived at the defendant's home with a warrant for the defendant's arrest. The officers knocked on the door, identified themselves to the defendant's wife, and asked if they could come inside. She let the officers in the house where they waited for the defendant to return home from work. When the defendant entered the house, one of the officers handed him the arrest warrant. One of the officers asked the defendant if he could look around. He said no, but was advised that on the basis of the lawful arrest the officers would nonetheless conduct a search.

The officers, accompanied by the defendant's wife, searched the entire house. In the master bedroom, the officers directed the wife to open drawers and to physically move its contents from side to side so that they might view any items that would have come from the crime. After completing the search, the officers seized numerous incriminating items.

ISSUE: Whether the warrantless search of the defendant's entire house can be conducted incident to his arrest?

HELD: No. The warrantless search of the defendant's entire house, incident to his arrest, was unreasonable as it extended beyond the defendant's person and the area under his immediate control.

DISCUSSION: When an arrest is made, it is reasonable for an officer to search the person arrested to remove any weapons that the arrestee might use to resist arrest. It is also reasonable for an officer to search and seize any evidence on the arrestee's person to prevent its concealment or destruction and for the means of committing an escape.

The area into which an officer may search is that within an arrestee's immediate control; the area that the person might gain possession of a weapon or destructible evidence. There is, however, no justification for routinely searching any room other than that in which an arrest occurs, or for that matter, for searching through desk drawers or other closed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant.

The search in this case went beyond the defendant's person and the area that he might have obtained either a weapon or something that could have been used as evidence against him. There was no constitutional justification, in the absence of a search warrant, for extending the search beyond the area from which the defendant was arrested.

New York v. Belton
453 U.S. 454, 101 S.Ct. 2860 (1981)

FACTS: A police officer stopped a car for speeding in which the defendant and four other men were riding. None of the men owned the car or were related to its owner. The officer smelled marijuana and saw an envelope on the floor of the car which he suspected of containing marijuana. The officer picked up the envelope and found marijuana inside. He ordered the men out of the car and arrested them. He searched the men and the passenger compartment of the car. On the back seat of the car the officer found a black jacket which belonged to the defendant. He unzipped one of the pockets of the jacket and discovered cocaine.

ISSUE: Whether the scope of a search incident to an arrest includes the passenger compartment of the automobile in which the arrestee was riding?

HELD: Yes. Once a lawful arrest of an occupant of an automobile is made, the officer may examine the contents of any containers found within the passenger compartment, including open or closed containers.

DISCUSSION: When a police officer makes a lawful arrest, the officer may, incident to that arrest, search the arrestee and the immediately surrounding area. Such searches are valid because of the need to remove any weapons the arrestee might use to resist arrest and to prevent the destruction or concealment of evidence. However, the *scope* of the search may not stray beyond the area within the immediate control of the arrestee (i.e. the area from within which an arrestee might gain possession of a weapon or destructible evidence).

Articles inside the relatively narrow area of the passenger compartment of an automobile are generally within the area into which an arrestee might reach in order to grab a weapon or evidentiary item. It follows that once a police officer has made a lawful arrest of the occupant of an automobile, the officer may, incident to that arrest, search the passenger compartment of that automobile.

It also follows from this general rule that an officer may examine the contents of any containers found within the passenger compartment. If the passenger compartment is within the reach of the arrestee, so will containers in it be within the passenger's reach. Such a container may be searched whether it is open or closed. The justification for the search however, is not that the arrestee has no privacy interest in the container, but rather, that the lawful arrest justifies the infringement of any privacy interest the arrestee may have.

In this case, the defendant was the subject of a lawful arrest. His jacket, located in the passenger compartment of the car, was within the immediate control of the defendant. The subsequent search of the defendant's jacket was a search incident to his arrest since the search immediately followed his lawful arrest and therefore did not violate the Fourth Amendment.

Knowles v. Iowa
525 U.S. 113, 119 S.Ct. 484 (1998)

FACTS: The defendant was lawfully stopped and issued a citation for speeding. Under Iowa law, the officer could have either arrested him or followed the more traditional route of issuing a traffic citation under Iowa Code Annotated § 321.485(1)(a). Another portion of the law, Iowa Code Ann § 805.1(4), states that the issuance of a citation in lieu of an arrest does not defeat the officer's authority to conduct an otherwise lawful search. The Iowa Supreme Court interpreted this statute as providing law enforcement officers the ability to search any automobile that has been lawfully stopped for a traffic violation. The search conducted pursuant to the defendant's traffic stop yielded contraband.

ISSUE: Whether law enforcement officers are justified in conducting searches of automobiles based solely on the fact that it has been stopped for a traffic violation.

HELD: No. Law enforcement officers are not justified in conducting searches of automobiles based solely on the fact that it has been stopped for a traffic violation.

DISCUSSION: The Supreme Court called the Iowa Supreme Court's interpretation of its statute a "search incident to citation," a derivative of a search incident to arrest. The Supreme Court stated that a search incident to arrest was a valid exception to the Fourth Amendment's warrant requirement because of the need to disarm the suspect and to preserve evidence for later use at trial.

The Court dismissed the consideration of officer's safety in allowing a search incident to citation because it did not believe the issuance of a citation is as dangerous as an arrest. The officer will not spend as much time with the defendant while issuing a citation, stress levels are not as great, and the outcome is not at uncertain as during an arrest. The Supreme Court also held that the second rationale for a search incident to arrest, to secure evidence for latter use, is not logical because it is unlikely the law enforcement officer will find other evidence of the traffic violation by searching the automobile. The Supreme Court struck down the search incident to citation.

Maryland v. Buie
494 U.S. 325, 110 S.Ct. 1093 (1990)

FACTS: Two men committed armed robbery in a restaurant. One of the robbers wore a red running suit. The police obtained arrest warrants for the defendant and his suspected accomplice. The police executed the arrest warrant for the defendant at his house. Once inside the defendant's house, the officers fanned out. One of the officers found the defendant in the basement and ordered him out, whereupon he was arrested, searched and handcuffed. Following the defendant's arrest, another officer entered the basement "in case there was someone else down there." While in the basement, he saw a red running suit on a stack of clothing in plain view and seized it. The red running suit was introduced into evidence against the defendant.

ISSUE: Whether the Fourth Amendment permits police officers, in effecting the arrest of a suspect in their home pursuant to an arrest warrant, to conduct a warrantless protective sweep of the premises?

HELD: Yes. The Fourth Amendment permits a limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief that the area to be swept harbors an *individual* posing a danger to those on the arrest scene.

DISCUSSION: A protective sweep is a quick and limited search of a premises, incident to an arrest and conducted to protect the safety of police officers or others. As an incident to an arrest, police officers may, as a precautionary matter and without probable cause or reasonable suspicion, look inside closets or other spaces immediately adjoining the place of arrest from which an attack could be launched. Beyond that, however, there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to the officer or officers.

Such a protective sweep, however, is not automatic. It is also not a full search of the premises, but extends only to a cursory inspection of those spaces where a person may be found as justified by the circumstances. A sweep may last no longer than is necessary to dispel the reasonable suspicion of danger, and in any event, no longer than it takes to complete the arrest and depart the premises.

In this case, possessing an arrest warrant and probable cause to believe that the defendant was in his home, the officers were entitled to search anywhere in the house, including the basement, in which he might be found. However, once the defendant was found, that search for him ceased, and there was no longer justification for entering any rooms that had not been searched.

Nevertheless, the police had an interest in taking steps to assure themselves that the defendant's house was not harboring other people who were dangerous and could unexpectedly launch an attack. The second officer did not go into the basement to search for evidence, but rather to look for the suspected accomplice or anyone else who might pose a threat to the officers. The interest in ensuring the officer's safety was sufficient to outweigh the intrusion this procedure entailed.

1. SEARCHES OF PERSONS ARRESTED

United States v. Robinson
414 U.S. 218, 94 S.Ct. 467 (1973)

FACTS: An officer observed the defendant driving an automobile. As a result of a check on the defendant's license four days earlier, the officer learned that the defendant's license had been revoked. He stopped the car and informed the defendant that he was under arrest for driving while his license was revoked. The officer conducted a search incident to arrest. During the search, the officer felt an object in the defendant's coat but could not determine what it was. The officer reached into the pocket and pulled out the object, a crumpled up cigarette package. The officer opened the package and found capsules he believed to be heroin.

ISSUE: Whether a full body search of a suspect for items other than evidence of the crime for which a suspect is arrested is within the scope of the search incident to an arrest?

HELD: Yes. During a lawful arrest, a full search of a person may be made of the arrestee's person by virtue of the lawful arrest.

DISCUSSION: The authority to search a person incident to a lawful arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would be found. It is the fact of the lawful arrest which establishes the authority to search. It is immaterial that the officer did not fear or suspect that the defendant was armed. Having come upon the crumpled package of cigarettes, the officer was entitled to search it as well as to seize it when the inspection revealed the heroin capsules.

2. SEARCHES OF THE ARRESTEE'S AREA AND POSSESSIONS

Illinois v. Lafayette
462 U.S. 640, 103 S.Ct. 2605 (1983)

FACTS: The defendant was arrested for disturbing the peace and taken to the police station. Without obtaining a warrant and in the process of booking him and inventorying his possessions, the police removed the contents of a shoulder bag the defendant had been carrying and found amphetamine pills.

ISSUE: Whether it is reasonable for the police to search the personal effects of a person under lawful arrest as part of the procedure at a police station house?

HELD: Yes. Consistent with the Fourth Amendment, it is reasonable for police to search the personal effects of a person under lawful arrest as part of the routine administrative procedure at a police station incident to booking and jailing the suspect.

DISCUSSION: The justification for such searches does not rest on probable cause, and thus the absence of a warrant is immaterial to the reasonableness of the search. However, in determining whether an inventory search is unreasonable under the Fourth Amendment, the promotion of legitimate government interests are balanced against the intrusion on an individual's Fourth Amendment interests. The government has a legitimate interest in protecting the owner's property from theft or false claims of theft by persons employed in police activities. A standardized procedure for making a list or inventory as soon as is reasonable after reaching the station house protects the owner's property while it is in police custody. Moreover, the fact that the protection of an arrestee's property might have been achieved by less intrusive

means does not, in itself, render an inventory search unreasonable.

3. CONTEMPORANEOUSNESS REQUIREMENT

United States v. Chadwick
433 U.S. 1, 97 S.Ct. 2476 (1977)

FACTS: The defendant was arrested after police officers developed probable cause that he was transporting a controlled substance in a footlocker. The footlocker remained under the exclusive control of law enforcement officers at all times. The agents did not have any reason to believe that the footlocker contained explosives or other inherently dangerous items or that it contained evidence which would lose its evidentiary value unless the footlocker was opened immediately. An hour and a half after the men were arrested, the agents opened the footlocker. They did not have a search warrant or consent. Large amounts of marijuana were found in the footlocker.

ISSUE: Whether a search incident to an arrest is reasonable ninety minutes after the arrest?

HELD: No. A warrant is required for a search of property seized at the time of an arrest if the search is remote in time or place or if no exigency exists.

DISCUSSION: The search cannot be justified as a search incident to an arrest if the search is remote in time or place from the arrest. When an arrest is made, it is reasonable for police to conduct a prompt, warrantless search of the arrestee's person and the area from within which the arrestee might gain possession of a weapon or destructible evidence. However, warrantless searches of a footlocker or luggage seized at the time of an arrest cannot be justified as incident to that arrest if the search is remote in either time or place from that arrest or no exigency exists. Here, there were no exigent circumstances. Also, once the footlocker was within the agents' exclusive control and there was no longer any danger that the defendant would gain access to the property to seize a weapon or to destroy evidence, a search of that property was no longer compelled by the arrest.

4. BODY CAVITY SEARCHES

5. PROTECTIVE SWEEPS AND SECURITY MEASURES

Maryland v. Buie
494 U.S. 325, 110 S. Ct. 1093 (1990)

FACTS: Two men committed armed robbery in a restaurant. One of the robbers wore a red running suit. The police obtained arrest warrants for the defendant and his suspected accomplice. The police executed the arrest warrant for the defendant at his house. Once inside the defendant's house, the officers fanned out. One of the officers found the defendant in the basement and ordered him out, whereupon he was arrested, searched and handcuffed. Following the defendant's arrest, another officer entered the basement "in case there was someone else down there." He saw a red running suit on a stack of clothing in plain view and seized it. The red running suit was introduced into evidence against the defendant.

ISSUE: Whether the Fourth Amendment permits police officers, in effecting the arrest of a suspect in their home pursuant to an arrest warrant, to conduct a warrantless protective sweep of the premises?

HELD: Yes. The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief, not probable cause, based on specific and articulable facts that the area to be swept harbors an *individual* posing a danger to those on the arrest scene, or suspicion to justify a sweep of adjacent areas to the arrest scene.

DISCUSSION: A protective sweep is a quick and limited search of a premises, incident to an arrest and conducted to protect the safety of police officers or others. As an incident to an arrest, police officers may, as a precautionary matter and without probable cause or reasonable suspicion, look inside closets or other spaces immediately adjoining the place of arrest from which an attack could be launched. Beyond that, however, there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to the officer or officers.

Such a protective sweep, however, is not automatic. It is also not a full search of the premises, but may extend only to a cursory inspection of those spaces where a person may be found if it is justified by the circumstances. A sweep may last no longer than is necessary to dispel the reasonable suspicion of danger, and in any event, no longer than it takes to complete the arrest and depart the premises.

In this case, possessing an arrest warrant and probable cause to believe that the defendant was in his home, the officers were entitled to search anywhere in the house, including the basement, in which he might be found. However, once the defendant was found, that search for him ceased, and there was no longer justification for entering any rooms that had not been searched.

Nevertheless, the police had an interest in taking steps to assure themselves that the defendant's house was not harboring other people who were dangerous and could unexpectedly launch an attack. The second officer did not go into the basement to search for evidence, but rather to look for the suspected accomplice or anyone else who might pose a threat to the officers. The interest in ensuring the officer's safety was sufficient to outweigh the intrusion this procedure entailed.

B. CONSENT

Schneckloth v. Bustamonte
412 U.S. 218, 93 S.Ct. 2041 (1973)

FACTS: A police officer stopped a car when he observed that its license plate light and a headlight were burnt out. Six men, including the defendant, were in the car. After the driver failed to produce a driver's license, the officer asked if any of the other five men had any identification. One of them produced a license and explained that he was the brother of the car's owner, from whom the car had been borrowed. After the six men had stepped out of the car at the officer's request, and after two more police officers had arrived, the officer who had stopped the car asked the owner's brother if he could search the car. The owner's brother replied, "Sure, go ahead." The owner's brother helped in the search by opening the trunk and the glove compartment. The officers found some stolen checks under a seat.

ISSUE: Whether the owner's brother could grant consent to the search of the car?

HELD: Yes. The validity of a consent to search is determined by the totality of the circumstances.

DISCUSSION: For consent to be valid, it must be proven, from the totality of the circumstances, that the consent was freely and voluntarily given and not the result of duress or coercion, express or implied. The consentor's ignorance of his right to refuse consent is only one factor to be considered in ascertaining the validity of the consent. In determining the meaning of a voluntary consent to a search, two competing concerns must be considered: (1) the legitimate need for such searches, and (2) the requirement of assuring the absence of coercion. The Fourth Amendment requires that consent to search not be coerced, by explicit or implicit means, by implied threat or covert force. No matter how subtly the coercion is applied, the "consent" resulting from the coercion is no more than a pretext for unjustified police intrusion.

Bumper v. North Carolina
391 U.S. 543, 89 S.Ct. 1788 (1968)

FACTS: Police officers went to the house of a widow as part of an investigation of a rape to which her grandson was linked. The officers falsely asserted that they had a search warrant and the widow consented to the search. The officers did not tell her anything about the crime they were investigating or that her grandson was suspected. Police found a .22 caliber rifle used in the rape.

ISSUE: Whether the grandmother's consent was voluntarily given even though the police falsely stated that they had a search warrant?

HELD: No. Where officers falsely assert that they have a search warrant and then procure "consent," the consent is invalid.

DISCUSSION: The widow's consent was not voluntary because it had been procured through a wrongful claim of authority. The government has the burden of proving that consent was freely, and voluntarily given. A search cannot be justified as lawful on the basis of consent where that "consent" has been given only after the official conducting the search has wrongfully asserted that he possessed a warrant. When a law enforcement officer claims authority to search a home pursuant to a warrant, they announce in effect that the occupant has no right to resist the search.

Frazier v. Cupp
394 U.S. 731, 89 S.Ct. 1420 (1969)

FACTS: The defendant and codefendant were arrested for murder. Police asked the codefendant for consent to search a duffle bag used by both defendants. He consented and evidence was found incriminating the defendant.

ISSUE: Whether a joint user of a duffle bag has the authority to consent to the search of the bag?

HELD: Yes. Persons with a reasonable expectation of privacy in a container can grant consent to search it.

DISCUSSION: The duffle bag was being used jointly by the defendant and the codefendant. Since the codefendant was a co-user of the bag, he had authority to consent to its search. The defendant, in allowing the codefendant to use the bag

and in leaving it in his house, assumed the risk that the codefendant would allow someone else to look inside.

United States v. Matlock
415 U.S. 164, 94 S.Ct. 988 (1974)

FACTS: The defendant was arrested in front of the home in which he rented a room. Several people lived in the home, including Gayle Graff. The officers approached Ms. Graff, who stated she shared a bedroom with the defendant in the home. The officers obtained Ms. Graff's consent to search the house for money and a gun. They found these items in the bedroom shared by Ms. Graff and the defendant.

ISSUE: Whether Mrs. Graff had the ability to grant consent to the search?

HELD: Yes. If the third person and the defendant have joint authority over the premises, then the third-party's consent to a search will be binding on the defendant. However, this "joint authority" principle only applies where the third-party has authority over the particular area to be searched.

DISCUSSION: When the prosecution seeks to justify a warrantless search by proof of voluntary consent, it may show that permission was obtained from a third party who possessed common authority over the item. Common authority is not to be implied from the mere property interest that a third-party has in the property. The authority which justifies the third-party consent rests on mutual use of the property by persons generally having joint access or control. It is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that any of their number might permit the common area to be searched.

United States v. Mendenhall
446 U.S. 544, 100 S.Ct. 1870 (1980)

FACTS: The defendant arrived at the Detroit Metropolitan Airport from Los Angeles. As she disembarked, she was observed by two DEA agents to fit a "drug courier profile" (arriving from a source city; last person to leave plane; appeared to be very nervous; completely scanned the entire area; proceeded past the baggage area without claiming any baggage; changed airlines for her flight out of Detroit). The agents approached the defendant, identified themselves as federal agents, and asked to see her identification and airline ticket. Her driver's license gave her name as Sylvia Mendenhall. The airline ticket, however, was issued in the name of "Annette Ford." The agents questioned the defendant, and she said that she just felt like using that name and that she had been in California for two days. One agent then specifically identified himself as a federal narcotics agent, and, according to his testimony, she became quite shaken, extremely nervous and she had difficulty speaking.

After returning the airline ticket and driver's license to her, the agent asked her if she would accompany him to the airport DEA office located about fifty feet away. Without a verbal response, she did so. The agent asked her if he could search her person and handbag and told her that she had the right to decline the search if she so desired. She responded, "go ahead." In her purse, he found an airline ticket issued to "F. Bush" three days earlier for a flight from Pittsburgh through Chicago to Los Angeles. She acknowledged that this was the ticket she used for her flight to California. A police woman asked the defendant to consent to a search of her person, and she agreed. The policewoman asked her to disrobe, and

she said that she had a plane to catch. The policewoman assured her that if she was not carrying narcotics, there would be no problem. She began to disrobe without further comment, handing two small packets, one of which appeared to contain heroin, to the policewoman. She was then arrested.

ISSUES: Whether the defendant voluntarily consented to the search?

HELD: Yes.

DISCUSSION: Not every encounter between an police officer and a citizen is an intrusion requiring objective justification. A person is seized only when, by means of physical force or a show of authority, his freedom of movement is restrained. As long as the person remains free to disregard the questions and walk away, there has been no constitutional intrusion upon the person's liberty.

Some examples of circumstances that might indicate a seizures are: the threatening presence of several officers, the display of a weapon by an officer, some physical touching of person, or the use of language or tone of voice indicating that compliance might be compelled.

In this case no seizure occurred. The events took place in the public concourse; the agents wore no uniforms and displayed no weapons; they did not summons the defendant to their presence, but instead, approached her and identified themselves as federal agents; they requested, but did not demand, to see her identification and ticket.

The final question is whether the defendant acted voluntarily. Whether the defendant's consent to accompany the agents was in fact voluntary or was the product of duress or coercion, express or implied, is to be determined by the totality of all the circumstances. The Court gave importance to the facts that she was twenty-two years old, had not graduated from high school, a black female, and the officers were white males. While they were relevant, they were not decisive. The Court found her consent to be voluntarily granted.

Florida v. Royer
460 U.S. 491, 103 S.Ct. 1319 (1983)

FACTS: The defendant purchased a one-way airline ticket to New York City at Miami International Airport with cash and under an assumed name. He also checked his two suitcases bearing identification tags with the same assumed name. Two detectives who had previously observed him and believed that his characteristics fit a "drug courier profile," and approached him. Upon request, but without oral consent, the defendant produced his airline ticket and driver's license, which bore his correct name. The defendant explained that a friend had made the ticket reservations in the assumed name. The detectives informed the defendant that they were narcotics investigators and that they had reason to suspect him of transporting narcotics. Without returning his ticket or driver's license, the detectives asked him to accompany them to a small room about forty feet away. Without the defendant's consent, one of the officers retrieved his luggage and brought it to the room. Although he did not orally consent to a search of the luggage, the defendant produced a key and unlocked a suitcase in which marijuana was found. The defendant did not object to the officers opening the second suitcase where they found more marijuana.

ISSUE: Whether the marijuana in the first suitcase was found as a result of a consensual search?

HELD: No. Consent granted during an illegal seizure is typically found to be the product of coercion.

DISCUSSION: Investigative detentions must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Investigative methods employed should be the least intrusive means reasonably available to verify or dispel reasonable suspicion in a short period of time. The officers did not do that here. They had no probable cause to either arrest the nervous young man who paid cash for airline tickets under an assumed name and carried two heavy suitcases or search those suitcases without proper consent. Consent granted during an illegal seizure will typically be held to be invalid.

Illinois v. Rodriguez
497 U.S. 177, 110 S.Ct. 2793 (1990)

FACTS: A witness told police that the defendant had beaten her. She also told police that the defendant was in "our" apartment, and that she had clothes and furniture there. Officers went with her to the apartment without an arrest or search warrant. She opened the door with a key and gave officers permission to enter. Once inside, the officers saw drugs and paraphernalia in plain view. At that time, the defendant was asleep in the apartment. However, it became evident that the witness was in fact no longer a resident of the apartment on the day of the entry, but had moved out weeks earlier.

ISSUE: Whether a warrantless entry is valid under the Fourth Amendment when it is based upon the consent of a third party whom the police reasonably believe to possess authority over the premises, but in fact does not?

HELD: Yes. A consent search will be valid if a person whom the police reasonably but mistakenly believe as the authority to grant consent.

DISCUSSION: The Fourth Amendment generally prohibits the warrantless entry of a person's home, whether to make an arrest or to search for specific objects. The prohibition does not apply, however, to situations in which voluntary consent has been obtained, either from the individual whose property is searched, or from a third party who possesses common authority over the premises. Moreover, the Fourth Amendment bans only "unreasonable" searches and seizures. Where the police make a factual determination about a search, their reasonable mistake on the issue of authority to consent does not transform the search into an unreasonable one.

To satisfy the reasonableness requirement of the Fourth Amendment, law enforcement officers must not always be correct, but they must always act reasonable. This is not to say that the police may always act on someone's invitation to enter the premises. Even if the invitation is accompanied by an explicit assertion that the person lives there, the surrounding circumstances could be such that a reasonable person would doubt its truth.

In this case, the witness did not have the common authority over the apartment that was necessary to give the officers valid permission to enter or search the apartment. She was an "infrequent visitor" rather than a "usual resident." However, the police were reasonably mistaken in their belief that the witness had authority to consent. Their entry on that consent was reasonable.

Florida v. Jimeno
500 U.S. 297, 111 S.Ct. 1801 (1991)

FACTS: An officer overheard the defendant arrange what appeared to be a drug transaction over a public telephone. The officer followed the defendant and observed him run a red light. The officer then pulled him over to the side of the road in order to issue him a traffic citation. The officer told the defendant that he had been stopped for a traffic infraction, but the officer went on to say that he had reason to believe that he was carrying narcotics in the car, and asked permission to search the car. The officer explained that the defendant did not have to consent to a search of the car. The defendant stated that he had nothing to hide, and gave permission to search the car. The officer found a folded brown paper bag on the floorboard on the passenger side of the car. He opened it and found cocaine inside.

ISSUE: Whether it is reasonable for an officer to consider a suspect's general consent to a search of his car to include consent to examine containers therein?

HELD: Yes. It is reasonable for an officer to consider a suspect's general consent to a search of his car to include consent to examine containers in the car.

DISCUSSION: The Fourth Amendment is satisfied when, under the circumstances, it is objectively reasonable for the officer to believe that the scope of the suspect's consent permitted him to open a particular container within the automobile. The touchstone of the Fourth Amendment is reasonableness. The Fourth Amendment does not proscribe all searches, only those which are unreasonable.

The Court has long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so. However, the scope of a search is generally defined by its expressed object. A suspect may limit the scope of the search to which he consents. In this case, the terms of the authorization to search were simple. The defendant granted the officer permission to search his car and did not place any express limitation on the scope of the search. The officer had informed the defendant that he would be looking for narcotics in the car. Therefore it was reasonable for the police to conclude that the general consent to search the car included consent to search containers within that car which might contain drugs.

Florida v. Bostick
501 U.S. 389, 111 S.Ct. 2382 (1991)

FACTS: As part of a drug interdiction effort, Broward County Sheriff's Department officers routinely boarded buses at scheduled stops and asked passengers for permission to search their luggage. Two officers boarded a bus that the defendant was riding. Without articulable suspicion, the officers questioned the defendant and requested his consent to search his luggage for drugs, advising him of his right to refuse. He gave his permission. After finding cocaine, the officers arrested the defendant.

The government conceded that the officers lacked reasonable suspicion to justify a seizure, and that, if a seizure of the defendant took place, the drugs found in his suitcase must be suppressed as tainted fruit.

ISSUE: Whether all police encounters constitute a "seizure" within the meaning of the Fourth Amendment?

HELD: No. A consensual encounter does not trigger the Fourth Amendment.

DISCUSSION: The proper test in deciding whether the bus passenger's consent was obtained involuntarily because of an illegal seizure is not whether a reasonable person would feel free to leave. The test is whether, taking into account all of the circumstances, would a reasonable passenger feel free to terminate the encounter. Random bus searches pursuant to a passenger's consent are not *per se* unconstitutional. Rather, the cramped confines of a bus are but one relevant factor to be considered in evaluating whether that encounter constitutes a "seizure" within the meaning of the Fourth Amendment.

Even when officers have no basis for suspecting a particular individual of any criminal activity, they may generally ask questions of that individual; for instance to examine his identification, and request to search his luggage. If the police do not convey the message that compliance with their request is mandatory, these requests are acceptable, and consent is voluntary.

In this case, the fact that the defendant did not feel free to leave the bus does not mean that the police seized him. His movements were confined as the natural result of his decision to travel by bus, not because of the police conduct. The officers did not point guns at the defendant or threaten him, but instead, specifically advised him that he could refuse consent. Therefore, the action by the police on the bus did not constitute a seizure within the meaning of the Fourth Amendment.

Ohio v. Robinette
519 U.S. 33, 117 S.Ct. 417 (1996)

FACTS: The defendant was lawfully stopped for a speeding violation. After the law enforcement officer issued the defendant a verbal warning, the officer asked him if he had any illegal drugs in his car. The defendant said no and gave the officer consent to search the car. The officer found a controlled substance in a film container located inside the automobile.

ISSUE: Whether the officer must inform the detainee that he had a right to leave before attempting to secure a voluntary consent to search the automobile?

HELD: No. Whether the detainee knew that he had a right to leave is only one factor in determining if his consent was voluntary.

DISCUSSION: The key to all Fourth Amendment issues is whether the officer acted in a reasonable manner. The Court stated that this question is usually answered after reviewing the facts that surround the situation at hand. Therefore, the Court prefers to avoid the establishment of bright-line rules in Fourth Amendment areas. In *Schneckloth v. Bustamonte*, the Supreme Court rejected a comparable bright-line rule that would have required a consenter to be informed of their right to refuse consent before their choice would be considered voluntary. While a reviewing court should consider whether a detainee knew of his right to leave at the time his consent is requested, the Court did not find this fact alone to be decisive. The voluntariness of a consent is to be determined by all the circumstances present.

C. INVENTORIES

South Dakota v. Opperman
428 U.S. 364, 96 S.Ct. 3092 (1976)

FACTS: The defendant's car was impounded for violations of municipal parking ordinances. At the impound lot, an officer observed a watch on the dashboard of the car and other personal items on the backseat and back floorboard. The car door was opened. Following standard procedures, the officer inventoried the contents of the car including the contents of the glove compartment which was unlocked. The officer found marijuana in the glove compartment and the defendant was arrested.

ISSUE: Whether the Fourth Amendment is violated when the police conduct an inventory search of a car lawfully impounded, without a warrant or probable cause, pursuant to standard police procedures?

HELD: No. The Fourth Amendment is not violated when the police conduct a routine inventory search of a defendant's car pursuant to standard police procedures.

DISCUSSION: When vehicles are impounded, the police routinely follow caretaking procedures by securing and inventorying the car's contents. These procedures developed in response to three distinct needs: (1) to protect the owner's property while it remains in police custody, (2) to protect the police against claims over lost or stolen property, and (3) to protect the police from potential danger due to the contents of the car. Applying the Fourth Amendment standard of reasonableness, the intrusion is constitutionally permissible for these reasons.

In this case, the police were engaged in a caretaking search of a lawfully impounded automobile. The reasonableness of the search was enhanced by the fact that the owner was not present at the time of impoundment to claim his property, and by the fact that a watch was visible to the police through the window before they made a search. The police followed standard procedures, and therefore, their conduct was not unreasonable under the Fourth Amendment.

Harris v. United States
390 U.S. 234, 88 S.Ct. 992 (1968)

FACTS: The defendant's car was seen leaving the site of a robbery. The car was traced and the defendant was arrested as he was entering the car near his home. After a cursory search of the car, an officer took the defendant to the police station. The car was impounded as evidence. A police regulation stated that an impounded vehicle had to be searched in order to remove all valuables from it. Pursuant to this regulation and without a warrant, an officer searched the car. While he was securing the window, however, he saw and seized the registration card with the name of the robbery victim on it.

ISSUE: Whether the officer discovered the registration card by means of an illegal search?

HELD: No. The discovery of the registration card occurred as a result of measures taken to protect the car while it was in police custody.

DISCUSSION: The Fourth Amendment does not require the police to obtain a warrant for standard inventories. Once the door of the car had lawfully been opened, the registration card, with the name of the robbery victim on it, was plainly visible. Objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure.

Colorado v. Bertine
479 U.S. 367, 107 S.Ct. 738 (1987)

FACTS: Police arrested the defendant for driving under the influence of alcohol. They called a tow truck and then searched the defendant's car and inventoried its contents in accordance with police procedures. The officer opened a closed backpack in which he found controlled substance, cocaine paraphernalia, and a large amount of cash.

ISSUE: Whether the police can enter a closed container during an inventory?

HELD: Yes. A warrantless inventory search of an impounded vehicle may include places where personal items can be found, including a search of the contents of closed containers found inside the vehicle.

DISCUSSION: This case is controlled by the principles governing inventory searches of automobiles and of an arrestee's personal effects rather than those governing searches conducted for the purpose of investigating criminal conduct. Inventories are a well defined exception to the warrant requirement. However, two conditions must be met before an inventory search of an impounded vehicle is lawful. First, that there was no showing that the police acted in bad faith or for the sole purpose of a criminal investigation. Second, that the police must follow standardized procedures so that the searching officer does not have unbridled discretion to determine the scope of the search.

In this case, the police were potentially responsible for the property taken into custody. By securing the property, the police protected the property from unauthorized interference. Knowledge of the precise nature of the property helped guard against claims of theft, vandalism, or negligence. Such knowledge also helped to avert any danger to police or others that may have been presented by the nature of the property. The warrantless search was reasonable under the Fourth Amendment.

Florida v. Wells
495 U.S. 1, 110 S.Ct. 1632 (1990)

FACTS: The defendant was arrested for DUI. He gave the arresting officer permission to open the trunk of his impounded vehicle. During the inventory search, the officer found two marijuana butts in an ashtray. He also found a locked suitcase in the trunk. The officer opened the suitcase and found a garbage bag containing a considerable amount of marijuana.

ISSUE: Whether a container found during an inventory search may be opened where there is no police policy regarding the opening of containers?

HELD: No. Absent a routine police policy regarding the opening of containers found during an inventory search, a container may not be opened.

DISCUSSION: An established routine must regulate the opening of containers found during inventory searches. This is to ensure that an inventory search is not a ruse for a general rummaging of the car in order to discover incriminating evidence. Policies governing inventory searches should be designed to produce an inventory.

However, there is no reason to insist that all inventory searches be conducted in a totally mechanical "all or nothing" fashion. An officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself. The allowance of the exercise of judgment based on concerns related to the purposes of an inventory search does not violate the Fourth Amendment.

In this case, there is no evidence of any police policy on the opening of containers found during inventory searches. Therefore, absent such a policy, the search was not sufficiently regulated to satisfy the Fourth Amendment, and the seizure of the marijuana was unlawful.

D. INSPECTIONS

See v. City of Seattle
387 U.S. 541, 87 S.Ct. 1737 (1967)

FACTS: The defendant refused to allow a city representative to enter and inspect the defendant's locked commercial warehouse without a warrant and without probable cause to believe that a violation of any municipal ordinance existed. The inspection was to be conducted as part of a routine, periodic city-wide canvass to obtain compliance with the fire code. After the defendant refused the inspector access, the defendant was arrested.

ISSUE: Whether a search warrant is required to conduct inspections of municipal fire, health, and housing inspection?

HELD: No. Legitimate government inspections are an exception to the Fourth Amendment's warrant requirement.

DISCUSSION: The search of private commercial property, as well as the search of private houses, is presumptively unreasonable if conducted without a warrant. An administrative agency's demand for access to commercial premises for inspection under a municipal fire, health, or housing inspection program will be measured against a flexible standard of reasonableness that takes into account the public need for effective enforcement of the regulation involved. Administrative entry, without consent, into areas not open to the public, may only be compelled through prosecution or physical force within the framework of a warrant procedure.

Business premises may reasonably be inspected in many more situations than private homes; any constitutional challenge to the reasonableness of programs for inspection of business premises, such as for licensing purposes, can only be resolved on a case by case basis under the general Fourth Amendment standard of reasonableness.

The Fourth Amendment bars prosecution of a person who has refused to permit a fire inspector to inspect his locked warehouse without a warrant.

Marshall v. Barlow's Inc.
436 U.S. 307, 98 S.Ct. 1816 (1978)

FACTS: An OSHA inspector entered the customer service area of Barlow's, Inc., an electrical and plumbing installation business. Mr. Barlow, president and general manager, was on hand. The OSHA inspector, after showing his credentials, informed Mr. Barlow that he wished to conduct a search of the working areas of the business. Mr. Barlow inquired whether any complaint had been received about his company. The inspector said no, but that Barlow's, Inc., had simply turned up in the agency's selection process. The inspector again asked to enter the nonpublic area of the business. Mr. Barlow asked whether the inspector had a search warrant. The inspector had none. Mr. Barlow refused the inspector admission to the employee area of his business. Three months later, the Secretary of Labor petitioned the United States District Court of the District of Idaho to issue an order compelling Mr. Barlow to admit the inspector. An Order was issued.

ISSUE: Whether a District Court order to allow an inspection of nonpublic areas of a business without sufficient reason is reasonable under the Fourth Amendment?

HELD: No. A District Court order to allow an inspection of nonpublic areas of a business without sufficient reason is unreasonable under the Fourth Amendment.

DISCUSSION: An inspection conducted pursuant to §8(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. § 657(a)), which empowers agents of the Secretary of Labor to search the work area of any employment facilities within the Act's jurisdiction in order to inspect for safety hazards and regulatory violations. An inspection of those documents specified in 29 U.S.C. § 1903.3, includes among the OSHA inspector's powers the authority "to review records required by the Act and regulations published in this chapter, and other records which are directly related to the purpose of the inspection," may not be effected without a warrant.

". . . probable cause justifying the issuance of a warrant may be based on not only specific evidence of an existing violation, but also on a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied with respect to a particular establishment; a warrant showing that a specific business has been chosen for a search on the basis of a general administrative plan for the enforcement of the Act derived from neutral sources such as, for example, dispersion of employees in various types of industries across a given area, and the desired frequency of search in any of the lesser divisions of the area, will protect an employer's Fourth Amendment rights."

". . . the Act is unconstitutional insofar as it purports to authorize inspections without a warrant or its equivalent . . . . Without a warrant the inspector stands in no better position than a member of the public. What is observable by the public is observable, without a warrant, by the government inspector as well." *Air Pollution Variance Bd. v. Western Alfalfa Corp.*, 416 U.S. 861; 94 S.Ct. 2114 (1974).

Michigan v. Tyler
436 U.S. 499, 98 S.Ct. 1942 (1978)

FACTS: Shortly after midnight a fire broke out in the defendant's furniture store. The local fire department responded. When the fire chief arrived around 2 a.m., as the smoldering embers were being

doused, the discovery of plastic containers of flammable liquid was reported to him. After the chief entered the building to examine the containers, he summoned a police detective to investigate possible arson. The detective took several pictures but ceased further investigation because of smoke and steam. By 4 a.m., the fire had been extinguished and the fire fighters departed. The fire chief and detective removed the containers and left. At 8 a.m., the chief and his assistant returned for a cursory examination of the building. About an hour later, the assistant and the detective made another examination and removed pieces of evidence. Twenty-six days later, a member of the state police arson section took photographs at the store and made an inspection, which was followed by several other visits, when additional evidence was obtained.

ISSUES: 1. Whether the entries by the fire fighters, the fire chief, and the police detective on the first two days lawful?

2. Whether the entries by the arson investigator twenty-six days after the fire was lawful?

HELD: 1. Yes. 2. No.

DISCUSSION: A burning building presents an exigency of sufficient proportions to render warrantless entry reasonable, and, once in the building for such purpose, fire fighters may seize evidence in plain view. Fire officials are charged not only with extinguishing fires, but with finding their causes. Where entries by fire and police officials after the date of the fire were clearly detached from the initial exigency, a valid warrant or consent is necessary to make a lawful entry.

On the facts of this case, no warrant was necessary for the morning re-entries of the building and seizure of evidence after the 4 a.m. departure of the fire chief and other personnel since these were a continuation of the first entry, which was temporarily interrupted by poor visibility. Fire fighters are charged not only with extinguishing fires, but with finding their causes. Prompt determination of the fire's origin may be necessary to prevent its recurrence. For these reasons, officials need no warrant to remain in a building for a reasonable time to investigate the cause of a blaze after it has been extinguished.

The later entries were clearly detached from the initial exigency, and since these entries were made without a warrant and without consent, they were unlawful. Evidence obtained from such entries are suppressed.

Camara v. Municipal Court
387 U.S. 523, 87 S.Ct. 1727 (1967)

FACTS: An inspector entered an apartment building to make a routine annual inspection for possible violations of the City's Housing Code. The building manager informed the inspector that the defendant, a lessee of the ground floor, was using the rear of his leasehold as a personal residence. The defendant refused to allow the inspector entry to his residence. The defendant was charged with the criminal violation of the code section permitting inspectors to inspect.

ISSUE: Whether inspectors can make warrantless entries to carry out their duties?

HELD: No. Inspectors must rely on consent, an exigency, or an inspection warrant to enter a premises to conduct an inspection.

DISCUSSION: At one time, the Supreme Court authorized warrantless entries for the purpose of conducting safety inspections. However, the Court altered its position because of three factors: 1) the occupant does not know if his or her premises is covered by the inspection authority, 2) the occupant does not know the inspector's authority, and 3) the occupant does not know if the inspector is acting under proper authority.

The Court did not hold, however, that inspectors may only enter with the use of a warrant. Most entries can be obtained with consent from an occupant. Some entries can be justified by the exigency posed to public health (such as putrid food conditions). However, the remaining entries must be supported by a warrant.

The Court restated that the primary principle of the Fourth Amendment was to prohibit unreasonable searches. Typically, searches must be supported by a warrant, granted upon probable cause. "The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest." In criminal cases, the government must establish probable cause of criminal activity.

For inspection warrants, the government's burden will depend on the type of inspection contemplated. "This is not to suggest that a health official need show the same kind of proof to a magistrate to obtain a warrant as one must who would search for the fruits or instrumentalities of crime. . . Experience may show the need for periodic inspections of certain facilities without a further showing of cause to believe that substandard conditions dangerous to the public are being maintained [citing *Frank v. Maryland*, 359 U.S. 360]." In some instances, the passage of time may justify an inspection warrant.

New York v. Class
475 U.S. 106, 106 S.Ct. 960 (1986)

FACTS: Two police officers observed the defendant driving above the speed limit in a car with a cracked windshield (both of which are traffic violations under New York law). They stopped the defendant, who emerged from his car and approached the officers. One officer went directly to the defendant's vehicle. The defendant provided the other officer with a registration certificate and proof of insurance, but stated that he had no driver's license.

The first officer opened of the door of the vehicle to look for the VIN, which was located on the left doorjamb on vehicles manufactured before 1969. When he did not find the VIN there, he reached into the interior of the car to move some papers obscuring the area of the dashboard where the VIN is located in later model cars. In doing so, the officer saw the handle of a gun protruding from underneath the driver's seat. He seized the gun and arrested the defendant.

The officers had no reason to suspect that the defendant's car was stolen, that it contained contraband, or that the defendant had committed an offense other that the traffic violations.

ISSUE: Whether the intrusion into the interior of the vehicle was lawful?

HELD: Yes. Because of the important role played by the VIN in the pervasive government regulation of the automobile and the efforts by the government to ensure that the VIN is placed in plain view, there is no reasonable expectation of privacy in the VIN.

DISCUSSION: The fact that papers on the dashboard obscured the VIN from plain view did not create a reasonable expectation of privacy in the VIN.

An automobile's interior is subject to Fourth Amendment protection from unreasonable intrusion by the police. However, the officer's reaching into the vehicle to remove the papers was not an unreasonable search but was incidental to viewing something in which the defendant has no reasonable expectation of privacy.

New York v. Burger
482 U.S. 691, 107 S.Ct. 2636 (1987)

FACTS: The defendant operated a wrecking yard which dismantled automobiles and sold their parts. Pursuant to a state statue authorizing warrantless inspections of automobile junkyards, police officers entered his junkyard and asked to see his license and records as to automobiles and parts. The defendant did not have the license. The officers conducted an inspection of the junkyard and discovered stolen vehicles and parts.

ISSUES: 1. Whether the warrantless search of an automobile junkyard, conducted pursuant to a statute authorizing such a search, falls within the exception to the warrant requirement for administrative inspections of pervasively regulated industries?

2. Whether an otherwise proper administrative inspection is unconstitutional because the inspection may disclose violations not only of the regulatory statute but also of the penal statutes?

HELD: 1. It depends. 2. No.

DISCUSSION: The warrantless search of an automobile junkyard, conducted pursuant to a statute authorizing such a search, may fall within the exception to the warrant requirement for administrative inspections of pervasively regulated industries. A business owner's expectation of privacy in commercial property is attenuated with respect to commercial property employed in a "closely regulated" industry. Where the owner's privacy interest is weakened and the government's interest in regulating particular businesses is heightened, a warrantless inspection of commercial premises is reasonable. This warrantless inspection, even in the context of a pervasively regulated business, will be deemed to be reasonable only so long as three criteria are met:

(1) There must be a "substantial" government interest. Because of the auto theft problem, the state has a substantial interest in regulating the auto dismantling industry.

(2) The warrantless inspections must be "necessary to further [the] regulatory scheme."

(3) The statute's inspection program, in terms of certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant. The statute provides a constitutionally adequate substitute for a warrant. It informs a business operator that regular inspections will be made, and also sets forth the scope of the inspection, notifying him of how to comply with the statute and as to who is authorized to conduct the inspection.

However, the time, place, and scope of the inspection is limited to impose appropriate

restraints upon the inspecting officers' discretion. The administrative scheme is not unconstitutional simply because, in the course of enforcing it, an inspecting officer may discover evidence of crimes, besides violations of the scheme itself.

VII. RELATED SEARCH AND SEIZURE ISSUES

A. "PRETEXTUAL STOPS AND SEARCHES AND SEIZURES

Whren v. United States
517 U.S. 806, 116 S.Ct. 1769 (1996)

FACTS: Plainclothes drug detectives were patrolling a known drug-use area in an unmarked police car. The detectives notice the defendant's vehicle because of its suspicious, though legal, activity. As the officers made a U-turn to get a closer look at the vehicle, it suddenly turned without signaling and sped off at an unreasonable speed. Within a short distance, the vehicle stopped behind other traffic at a red light. One detective got out of the unmarked car, approached the vehicle, identified himself as a police officer, and directed the operator to put his vehicle in park. The detective observed two large plastic bags of what appeared to be crack cocaine in the defendant's hands. At that point, the detective arrested him. The subsequent search of the vehicle yielded several types of illegal drugs.

ISSUE: Whether the officer's pretextual detention of a motorist for a traffic violation rendered the seizure unreasonable within the meaning of the Fourth Amendment?

HELD: No. The reasonableness of the officer's seize turns on whether the officer had the authority to make the seizure.

DISCUSSION: The Supreme Court determined that probable cause that the defendant's vehicle was involved in a traffic violation existed and that the plainclothes detectives would not have stopped the vehicle but for their concern that the vehicle might also have been used in drug activity. As a general matter, the Court held that stopping an automobile is reasonable if the police officer has probable cause to believe that a traffic violation has occurred. Therefore, the Court was only left to consider whether the officers' pretextual intent in stopping the vehicle converted an otherwise reasonable police activity into an unlawful stop. While previous decisions left no doubt that the officer's motive can invalidate inventory searches and administrative inspections, the Court has never held the officer's motives relevant in any other area. The Court held that "subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." The seizure was lawful.

B. ENTRY IN UNDERCOVER CAPACITY

Gouled v. United States
255 U.S. 298, 41 S.Ct. 261 (1921)

FACTS: Several military personnel and an attorney were believed to be involved in a conspiracy of using the mails to defraud the United States. One of the defendants agreed with police to go to the codefendant's office and pretend to make a friendly call on him. Once he had gained admission to the codefendant's office, and, in his absence, seized and carry away several documents.

ISSUE: Whether an agent of a government has to comply with the Fourth Amendment as the government would?

HELD: Yes. An agent of a government must comply with the Fourth Amendment just as any other member of the government would.

DISCUSSION: The secret taking, without force, from the premises of anyone by a representative of any branch of the Federal government is a search and seizure. It is immaterial that entrance to the premises was obtained by stealth or through social acquaintance, or in the guise of a business call.

Lewis v. United States
385 U.S. 206, 87 S.Ct. 424 (1966)

FACTS: An undercover narcotics agent telephoned the defendant's home about the possibility of purchasing marijuana. The agent misrepresented his identity to the defendant and was invited to the defendant's home on two occasions where he subsequently bought marijuana.

ISSUE: Whether the Fourth Amendment is violated when a government agent, by misrepresenting his identity, is invited into a defendant's home?

HELD: No. Where a defendant invites an undercover government agent into his home for the specific purpose of executing the felonious sale of narcotics, the agent's misrepresentation of his identity does not violate the defendant's Fourth Amendment rights.

DISCUSSION: The government is entitled to use decoys and to conceal the identity of its agents in the detection of many types of crimes. A rule prohibiting the use of undercover agents in any manner would severely hamper the government in ferreting out those organized criminal activities that are characterized by court dealings with victims who either cannot or do not protest.

While the home is accorded the full range of Fourth Amendment protection, when the home is converted into a commercial center to which outsiders are invited for purposes of transacting unlawful business, that business is entitled to no greater protection than if it were carried on in a store, garage, car, or on the street. A government agent, in the same manner as a private person, may accept an invitation to do business and may enter upon the premises as long as it is for the very purposes contemplated by the occupant and the entry is not used to conduct a general search for incriminating materials.

In this case, the defendant invited the undercover agent into his home for the specific purpose of executing a felonious sale of narcotics. The agent did not commit any acts that were beyond the scope of the business, such as conducting a surreptitious search, for which he had been invited into the house. Thus, the defendant's Fourth Amendment rights were not violated.

C. FORFEITURE

Florida v. White
526 U.S. 559, 119 S.Ct. 1555 (1999)

FACTS: Florida police officers observed the defendant use his car to deliver cocaine. This subjected

the car to forfeiture under a Florida statute that prohibited the use of motor vehicles in the transportation of contraband. Several months later, the officers arrested the defendant at his place of employment for unrelated criminal activity. They also seized his car, without a warrant, as they believed it was subject to the Florida forfeiture statute.

ISSUE: Whether the officers may make a warrantless seizure of a car subject to forfeiture in a public place?

HELD: Yes. Officers may make a warrantless seizure of a car subject to forfeiture in a public place.

DISCUSSION: After the defendant used the automobile in violation of the forfeiture statute, the Court considered the automobile contraband. As the contraband was readily movable, the officers were reasonable in their immediate and warrantless seizure. This is to be distinguished from a seizure on private property as entry to make a seizure there constitutes an invasion of privacy. To seize an automobile on private property, officers must obtain a search warrant.

D. PRIVACY PROTECTION ACT OF 1980

Zurcher v. Stanford Daily
436 U.S. 547, 98 S.Ct. 1970 (1978)

FACTS: During a civil disturbance, a group of demonstrators armed with sticks and clubs attacked the group of nine police officers. One officer was knocked to the ground and was struck repeatedly on the head. Another officer suffered a broken shoulder. All nine were injured. The officers themselves were able to identify only two of their assailants, but one saw at least one person photographing the assault.

A special edition of the Stanford Daily (Daily), a student newspaper published at Stanford University, carried articles and photographs devoted to the protest. The photographs carried the byline of a Daily staff member and indicated that he had been in the area of the assault on the nine officers. A warrant was issued for an immediate search of the Daily's offices for negatives, film, and pictures showing the events and occurrences at the demonstration.

ISSUE: Whether the newspaper’s reasonable expectation of privacy is protected by the First Amendment, "freedom of the press" protection from the government intrusion?

HELD: No. Organizations involved in traditional First Amendment activities are not provided extra constitutional protections.

DISCUSSION: A search of the premises of a newspaper which had published articles and photographs of a clash between demonstrators and police is not unreasonable within the meaning of the Fourth Amendment and does not violate the First Amendment. There is no constitutional requirement that when the innocent party of a search is a newspaper, criminal evidence must generally be secured through a subpoena duces tecum rather than a search warrant. Where materials presumptively protected by the First Amendment are sought to be seized, the warrant requirement of the Fourth Amendment should be administered to leave as little as possible to the discretion or whim of the officer in the field.

NOTE: This decision led to the enactment of 42 U.S.C. § 2000aa (Privacy Protection Act) which places some additional burdens on government officials attempting to secure a search warrant of premises

traditionally operated in First Amendment activities.

TABLE OF AUTHORITIES